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COURTS AND COMMUNITIES: HOW ACCESS TO JUSTICE PROMOTES A HEALTHY COMMUNITY

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Leadership matters. During Chief Judge Robert M. Bell's tenure as Maryland's leading jurist, the state has become a leader in access to justice. The hallmark of a healthy democracy is one in which individuals can exercise their rights to enforce the protections, privileges, and opportunities available to them under the law. They can only do so, however, if they can access the justice system through which those rights are enforced.

One reflection of Chief Judge Bell's commitment to this principle was the creation of the Maryland Access to Justice Commission in 2008. The forty-six-member commission includes key decision-makers from the judicial branch, legislators, executive branch agencies, the bar and the civil legal services delivery community. Retired Court of Appeals judge, Hon. Irma S. Raker, serves as the chair. Hon. Ben Clyburn, Chief Judge of the District Court of Maryland, serves as vice-chair. About twenty-eight states have a formal access to justice commission.¹ Maryland's is one of only a few housed within the judicial branch, which means that it is poised to have an impact on court practice as well as on other aspects of access to justice. In the commission, Maryland has assembled a dynamic and effective coalition where court leaders, providers, and the community together explore how best to create a justice system accessible to all.²

During Chief Judge Bell's tenure, the Maryland Judiciary has emerged as a leader in access to justice in three key ways: (1) Maryland has emerged as a national leader in responding effectively to the needs of the self-represented; (2) the Maryland Judiciary has stood up as a powerful voice in support of the civil legal services delivery sys-

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1. For more information about access-to-justice commissions in other states, see *Resource Center on Access to Justice Initiatives*, AM. BAR ASS'N, http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice.html (last visited May 2, 2013).

2. For additional information about the Maryland Access to Justice Commission, see MD. ACCESS TO JUSTICE COMM'N, www.mdcourts.gov/mdatjc (last visited June 1, 2013).

tem; and (3) the courts have played a key role in advancing law reform initiatives that enhance access to justice.

I. MARYLAND—A NATIONAL LEADER IN RESPONDING TO SELF-REPRESENTATION

Maryland has emerged as a national leader in its response to the increasing phenomenon of self-representation. One of the first innovations embraced by the Maryland Judiciary after Chief Judge Bell assumed the role was the creation of Family Divisions and Family Services Programs. The Maryland Judiciary used the opportunity presented by new funding for family law reform efforts to support family law self-help centers in all circuit court locations. This comprehensive statewide approach is unique. Maryland is one place where the Judiciary's commitment has had significant and uniform reach across the state.

More recently, the District Court of Maryland has launched its own strategic approach to addressing the needs of the many thousands of self-represented individuals who appear in its courtrooms daily. The District Court Self-Help Center, launched in December 2009, has a single walk-in center at the Glen Burnie courthouse. Maryland Legal Aid operates the Center. On-site staff attorneys assist people needing assistance in small claims, landlord tenant matters, and some domestic violence matters. The District Court has used technology to leverage the impact of the Center. Walk-in clients use a touchscreen to enter demographic and case data, to get forms while they wait, or to use key legal help websites. Finally, the Center has expanded its reach statewide by providing assistance via telephone and live chat. During 2012, the Center served over 23,000 individuals in every jurisdiction in Maryland.³

Other innovations supported by the Judiciary have helped create a positive climate for the self-represented. These include the People's Law Library,⁴ Maryland's online legal content website managed by the Maryland State Law Library. In addition, the Judiciary provides a network of public law libraries, many of which are staffed, and some of which operate legal clinics. The Judiciary also offers training for non-judicial court staff on how to ethically aid the public, and a range of print and multimedia resources to help court users understand how to effectively represent themselves.

3. District Court Self-Help Center, Visitor Numbers 2012 (on file with author).

4. PEOPLE'S LAW LIBRARY OF MD., <http://peoples-law.org/> (last visited June 1, 2013).

II. THE MARYLAND JUDICIARY—KEY SUPPORTER OF THE CIVIL LEGAL SERVICES DELIVERY SYSTEM

In administering justice, courts see clearly the impact economic disparity has on the fates of those who come before them. Those with means or with cases likely to generate a fee tend to be represented when they appear in court. Those without means, or whose cases do not involve money judgments, are less likely to be able to secure counsel. The courts, therefore, are uniquely qualified to recognize that to fulfill the promise of equal justice for all, we need a robust civil legal services delivery system through which the poor and vulnerable can secure representation and other forms of legal help. Over the last seventeen years, the Maryland Judiciary has become a powerful voice for the delivery system, advocating for and directing resources to support non-profit civil legal service providers in the state.

Maryland for many years relied primarily on the Interest on Lawyers' Trust Accounts ("IOLTA") program to garner funds to support the state's civil legal services providers. Interest funds generated from these accounts are directed to the Maryland Legal Services Corporation ("MLSC"), which uses the funds to make grants to the state's civil legal aid providers. Banks were not required to pay a competitive rate on those accounts, however, until 2008 when the Maryland Court of Appeals adopted a comparability rule.⁵ Maryland Rule 16-610 requires banks to pay interest on IOLTA accounts at a rate comparable to similarly situated accounts. Maryland was the fourth state to institute an IOLTA program, back in 1982,⁶ and the eighteenth to adopt a comparability rule.⁷

With the precipitous decline in interest rates that began in late 2008, the Judiciary has used its leadership to advocate for creative solutions to keep civil legal services funded in Maryland. While it was innovative in its time, the IOLTA program is no longer the prime engine of funding for civil legal services in the state. When the program was created in 1982, IOLTA accounts earned an average of 5.5% in interest.⁸ When interest rates declined in late 2003, the Maryland General Assembly added to the funds for civil legal services by approving a surcharge on court filing fees, the proceeds of which were di-

5. MD. R. 16-610.

6. *IOLTA History*, IOLTA.ORG, http://www.iolta.org/grants/item.IOLTA_History (last visited May 2, 2013).

7. Janet Súdman Eveleth, *New IOLTA Comparability Rule Takes Effect*, MD. BAR BULL., Apr., 2008.

8. Liz Farmer, *Top Court Adopts Comparability Rule*, DAILY REC., Dec. 7, 2007, available at <http://www.mlsc.org/TDR.12.03.07.article.pdf>.

rected to MLSC.⁹ In 2008, the federal funds rate was reduced to 0–0.25%, where it remains today. As a result, income from the IOLTA program declined by 74%, from a high of \$6.8 million in 2008 to a projected \$1.8 million in 2013.¹⁰ To ensure that civil legal services could continue to represent low-income Marylanders during these difficult economic times, the Maryland Judiciary included in its 2010 legislative package a bill to increase the filing fee surcharge. As a result of the successful passage of the bill, filing fee revenue increased by nearly \$5 million per year. When the bill was due to sunset in 2013, the Judiciary again supported a bill to retain the filing fee increases. House Bill 838, passed during the 2013 legislative session, extends the sunset for another five years, retaining critical funding for civil legal services until 2018.¹¹ The Judiciary also supported a successful effort to increase a statutory appropriation for MLSC, which added another \$1 million to grants for civil legal services providers.¹² Finally, the Judiciary passed rules to make attorney reporting on IOLTA accounts mandatory and to create sanctions for attorneys who fail to comply with the reporting requirement.¹³ This enables MSLC to verify and maximize the income from IOLTA accounts.

The Maryland Access to Justice Commission aids policy makers and lawmakers and helps paint a picture of the real benefits that accrue to the state through the work of Maryland's non-profit civil legal services providers. In January 2013, the Commission issued the report, *Economic Impact of Civil Legal Services in Maryland*.¹⁴ Data collected from providers demonstrates that the work of civil legal services programs in Maryland significantly boosts the state's economy each year by bringing in millions of federal dollars, improving the lives of low-income residents, and saving the State millions in expenditures. The Commission concluded that, in fiscal year 2012 alone, Maryland civil legal services programs generated \$190 million in economic ac-

9. Eveleth, *supra* note 7.

10. MD. LEGAL SERVS. CORP., SUPPORT HB838: PREVENT A CATASTROPHIC LOSS IN CIVIL LEGAL SERVICES TO OUR MOST VULNERABLE CITIZENS (on file with author); *see also* Fiscal and Policy Note (revised), H.B. 838, 2013 Sess. (Md. 2013), *available at* http://mga.leg.maryland.gov/2013RS/fnotes/bil_0008/hb0838.pdf.

11. H.B. 838, 2013 Leg. (Md. 2013).

12. H.B. 1303/S.B. 809, 2013 Leg. (Md. 2013) (enrolled).

13. MD. R. 16-608.

14. MD. ACCESS TO JUSTICE COMM'N, *ECONOMIC IMPACT OF CIVIL LEGAL SERVICES IN MARYLAND* (2013), *available at* <http://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/016000/016211/unrestricted/20130063e.pdf>.

tivity, cost savings, and increased productivity as a result of their advocacy.¹⁵

Finally, the Maryland Judiciary has been a critical player in advancing a statewide commitment to pro bono legal service among the bar. Early in his tenure, Chief Judge Bell appointed a pro bono commission to explore ways to enhance pro bono practice in the State. That commission recommended rule changes, the creation of a statewide standing committee, and a network of local pro bono committees. The Standing Committee on Pro Bono Legal Service coordinates the activities of local pro bono committees around the State, which work locally to advance the commitment of the bar. Perhaps most strikingly, since 2002 all 36,000 Maryland lawyers have been required to report annually on their pro bono activity.¹⁶ Annual pro bono reporting has permitted the State to understand the full potential, the limits and the challenges of pro bono practice, and tailor programs to better meet the needs of the state's most vulnerable. The reporting requirement highlights the bar's commitment and allows the State to acknowledge the work of the many thousands of lawyers who devote their time and resources to aid those in need. Maryland is one of only seven states that require pro bono reporting. Maryland attorneys reported providing \$1.1 million hours of service, and \$4 million in monetary contributions to legal services organizations during 2011.¹⁷ In 2012 a donation page was added to the online pro bono reporting program, giving attorneys an opportunity to contribute to a legal services program of their choice. During the last reporting cycle, attorneys donated over \$59,000 online using the donation page.¹⁸

The Judiciary has also enhanced the civil legal services delivery system by directing grants to programs that enhance access to representation including Judicare, which provides assistance in contested child custody matters, the Protective Order Advocacy Representation Programs ("POARP"), and similar programs that provide legal help and representation to victims of domestic violence.

Early in the economic downturn, when the foreclosure crisis hit and it was clear that many thousands of Marylanders were at risk of losing their homes, Chief Judge Bell acted quickly to galvanize the justice community into action. He planned and funded the Foreclosure

15. *Id.*

16. MD. R. 16-903.

17. MD. ADMIN. OFFICE OF THE COURTS, CURRENT STATUS OF PRO BONO SERVICE AMONG MARYLAND LAWYERS, YEAR 2011 (2012).

18. *Id.* at 20.

Prevention Project. This pro bono effort, coordinated by the Pro Bono Resource Center of Maryland, has provided training for hundreds of attorneys who agree to provide pro bono help to homeowners at risk of foreclosure. During 2011, 760 lawyers provided over 12,900 hours of pro bono assistance through the program.¹⁹ Through the Maryland Mediation & Conflict Resolution Center (“MACRO”), another important part of Chief Judge Bell’s legacy, the Judiciary supported the State’s efforts to create foreclosure mediation programs for at risk homeowners. Mediation has been a critical response to ameliorate the foreclosure crisis.

III. MARYLAND AS A KEY INNOVATOR IN LAW REFORM EFFORTS TO BOOST ACCESS TO JUSTICE

Finally, the Maryland Judiciary has launched a dialogue on a number of law reform initiatives with real potential to enhance access to justice. There will always be individuals who cannot afford counsel, but could the market for legal representation be structured in such a way that low- and moderate-income Marylanders could attract and pay for their own lawyer? Only a small percentage of low-income individuals use a lawyer to solve legal problems. As author Richard Susskind has suggested, this means there is a large untapped market for legal services.²⁰ The Maryland Access to Justice Commission has advanced several law reform initiatives with potential to unlock that market for lawyers in a way that would benefit ordinary Marylanders.

Limited scope representation, or “unbundling,” is an alternative mechanism for delivering high quality legal services to well-prepared clients. The client and the lawyer together decide which tasks would be most appropriate for the lawyer to perform, and which the client will handle. They enter into a carefully drafted retainer agreement through which the client engages the attorney to handle one or more discrete aspects of her case. The client may elect to engage the attorney to prepare court documents only; or the client may prefer to prepare her own pleadings using court forms, to engage the attorney to coach her prior to mediation or trial, or, where permitted, to make a limited appearance at a court proceeding. The Commission has drafted proposed rules to support limited scope representation. The rules are pending with the Court of Appeals Standing Committee on Rules of Practice & Procedure (“Rules Committee”).

19. *Id.* at ii.

20. RICHARD SUSSKIND, *THE END OF LAWYERS* (2008).

The Commission has also been working to advance the use of attorney's fees to enhance access to justice. Markets are shaped by incentives. Incentives in turn are shaped by the laws and regulations that govern the market. We can use laws and rules to shape the market for legal services to create incentives for private lawyers to represent low-income clients with meritorious civil claims. Achieving access to justice for all Marylanders does not have to mean that everyone gets a free lawyer. Many individuals without the means to pay for an attorney will be able to secure representation from private lawyers, if the law permits an award of attorneys' fees where the case is met with success.²¹ During the 2013 legislative session, the Maryland Judiciary and the Maryland Access to Justice Commission supported a bill that would have permitted the award of attorneys' fees to successful plaintiffs asserting a state constitutional claim and other types of claims.²² While the bill did not pass this session, the Commission will continue its efforts to promote the use of attorney's fees. The Court of Appeals is currently considering rule changes that would streamline the way in which fee awards are calculated to promote their effective use.

The economic downturn has forced most states to pursue every possible avenue to support the civil legal services delivery system and address the legal needs of the vulnerable. Like many of its sister states, Maryland has pursued every alternative to full representation in devising resources for persons of limited means. Online tools and resources, forms, written materials, multimedia, and self-help centers are an excellent investment and provide the opportunity to triage the legal needs of the poor. But when there is a lot at stake, or when an individual is of limited capacity or otherwise vulnerable, there is often no good substitute for representation.

Few Marylanders realize that they do not have a right to court-appointed counsel if they cannot afford to hire their own lawyer in most civil matters. Marylanders facing the possible loss of custody of a child, seeking protection from domestic violence, or at risk of losing their home are often forced to handle their case on their own, without the help of a lawyer. The first recommendation made by the Maryland Access to Justice Commission in its 2009 Interim Report,²³ was an endorsement of a broader right to counsel, suggesting that Marylanders should have a right to representation in cases where

21. Md. Access to Justice Comm'n, *Fee-Shifting to Promote the Public Interest in Maryland*, 42 U. BALT. L.F. 38 (2011).

22. H.B. 130/S.B. 262, 2013 Leg. (Md. 2013).

23. MD. ACCESS TO JUSTICE COMM'N, INTERIM REPORT (2009), available at <http://mdcourts.gov/mdatjc/pdfs/interimreport111009.pdf>.

basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody. In 2011, the Commission published an implementation plan and fiscal narrative in a single report entitled *Implementing a Civil Right to Counsel in Maryland*.²⁴

A civil right to counsel can be a powerful strategy for furthering the state's commitment to equal access to justice for all. The Commission continues to advance a statewide dialogue about the benefits of expanding the right to counsel. This year, the Commission worked for the successful passage of a bill to create a task force to study the issue. Senate Bill 262, which passed and was signed into law, provides for a Task Force on Implementing a Civil Right to Counsel, with members appointed by the Governor, the Chief Judge, the House, and the Senate.²⁵ The Commission will staff the task force, which is required to issue its report by October 2014.

IV. HOW DO WE FULFILL THE PROMISE OF ACCESS TO JUSTICE?

The innovations of the last few years have real promise. Over the next decade, those reforms will continue to evolve and bear fruit, but only if we create structures that support and nourish those changes. As a justice system—the courts, the provider community, law enforcement, and the bar—we all need to relinquish our significant investment in the status quo. We have invested heavily in the way we do business now. Our buildings, IT infrastructure, law firms, legal education, and career ladders are all designed for the justice system of twenty years ago (or more). We have to ask ourselves, “How does the public expect to interact with us? How do individuals solve problems now, and how will they expect to solve problems in a decade?” We then need to re-engineer our systems, our buildings, our programs, and law firms to operate in that future.

As we streamline technology, for example, we may find we are spending less on human capital. Perhaps individuals working in courts, law firms, or legal aid organizations who now enter data or handle administrative tasks will be freed to provide more direct assistance to the public, clients, or persons without counsel. Perhaps savings in one area will allow us to invest in ways to more efficiently guide people through legal processes and the judicial system generally.

24. MD. ACCESS TO JUSTICE COMM'N, *IMPLEMENTING A CIVIL RIGHT TO COUNSEL IN MARYLAND* (2011), available at <http://mdcourts.gov/mdatjc/pdfs/implementingacivilrighttocounselinmd2011.pdf>.

25. S.B. 262, 2013 Leg. (Md. 2013).

Richard Susskind talks about “embedded legal knowledge”—the idea that the law is injected into our processes and systems and operates without human intervention.²⁶ For example, if an individual were entitled to a benefit, her right would be acknowledged automatically by the agency administering those benefits, and the benefit delivered. When your income dropped below a certain amount, your access to food stamps, for example, might kick in and the benefit will be sent automatically. Another benefit of comprehensive knowledge systems would be “personalized alerting.”²⁷ Court users would get a tweet or email letting them know that a document had been filed in their case, or that a deadline was approaching. As new IT systems are developed, lawyers will certainly expect such a service. There is no reason why it could not also be extended to persons who represent themselves. As we develop those types of tools, we will also have to evaluate the risks along with the benefits. Information sharing can be a powerful good, but it comes with significant risks that must be weighed.

We will also have to pay special attention to the needs of critical populations whose needs may be overlooked as new delivery mechanisms and tools are developed. More resources are now delivered online. There are fewer books, physical libraries, and print materials. Incarcerated individuals who have little or no access to technology and seniors or populations with limited digital literacy may find it even more difficult to find legal information or obtain legal help. Demographic changes put increasing pressure on the limited language resources available to the courts and provider community. To meet the changing needs of those served by the justice community, we may need to shift investments as needs evolve.

Finally, it is likely that the practice of law will be quite different in the future. Young lawyers may set themselves up in practice, using technology and practice models that mean their services are reachable for low- and moderate-income clients. We will need rules, case management systems, and practice standards that support these types of practice. With planning, preparation, and openness to change, the justice system may indeed capture the benefits these reforms and innovations promise.

V. ACCESS TO JUSTICE MEANS A HEALTHIER COMMUNITY

What will the impact be on our communities when all Marylanders have equal access to justice? The reforms discussed here are

26. SUSSKIND, *supra* note 20, at 142.

27. *Id.* at 143.

beginning to bear fruit, but ordinary Marylanders may never fully appreciate how these reforms benefit them directly. When low-income individuals can walk into a Maryland courtroom with an attorney any time their basic human needs are stake, when persons with disabilities can access online everything they need to answer a question, file a claim, or respond to a pleading, when persons entering our courts find it easy to understand the process and participate effectively, we will simply be fulfilling the expectations they did not know they had.

Even if it appears unremarkable to those who benefit directly, access to justice benefits us all by creating healthier families, neighborhoods, and communities. When workers can enforce their rights to fair pay, benefits, and freedom from discrimination, then unscrupulous employers lose their unfair advantage. That means that employers who pay fair wages and treat their workers well can compete in the marketplace. Everyone's workplace is improved. Similarly, when tenants can enforce their rights to safe and decent housing, fair practices, and honest treatment, unscrupulous landlords cannot reap large profits at the expense of their tenants. Landlords who are fair and maintain their properties can therefore compete in the housing market. The housing stock improves. Finally, when one family is able to get the child support or other financial help to which their family is entitled, or when families can resolve conflicts peacefully, family members thrive, adults keep their jobs, children do well in school, and those families purchase goods and services, and contribute to their community. The entire community benefits.

Access to justice matters to individual Marylanders, especially to the most vulnerable. And it benefits the community at large. With a leadership style that puts the emphasis on consensus building, Maryland's retiring Chief Judge has been extraordinarily effective. His values are reflected in the character of the Maryland Judiciary today and will continue to have an impact for many years to come.