



MASSACHUSETTS
ACCESS TO JUSTICE COMMISSION

ANNUAL REPORT ON ACTIVITIES
AUGUST 2020



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INTRODUCTION

The Massachusetts Access to Justice Commission was established by the Supreme Judicial Court in 2005 to provide leadership, vision and coordination for the many organizations dedicated to improving access to justice for all persons in the Commonwealth who are unable to afford counsel for their essential civil legal needs.¹ This Report provides an update on the Commission's ongoing work and new initiatives during the period August 1, 2019 through July 31, 2020, with a particular focus on three core strategies²:

- I. Improving assistance to self-represented litigants;
- II. Increasing justice by improving the effectiveness of, and the funding for, civil legal aid; and
- III. Increasing services provided by private attorneys.

Much of the Commission's work during this past year has focused on the unprecedented challenges to ensuring access to justice in the midst of the global COVID-19 pandemic, which has exacerbated existing systemic racial and economic inequalities and disproportionately impacted vulnerable populations. In March 2020, the Commission created a COVID-19 Task Force to foster collaboration and marshal resources to respond to the particular challenges of accessing justice and connecting those in need with resources during the pandemic. The Task Force created three committees: an access to courts committee; a materials and communications committee; and a pro bono committee.

- *Access to Courts Committee*: addresses issues related to the impact of COVID-19 on court processes, including barriers to access created by courts' moving toward remote proceedings, with a focus on three areas with high turnout of self-represented litigants: housing, consumer debt and family law.
- *Materials and Communications Committee*: promotes the development and distribution of information to social service advocates and self-represented litigants on pandemic-related law and legal procedures.
- *Pro Bono Committee*: coordinates remote pandemic-related pro bono responses to emerging needs statewide.

¹ The Supreme Judicial Court initially created the Massachusetts Access to Justice Commission in February 2005 with a five-year mandate (a/k/a the "First Commission"), and then reauthorized the Commission for another five years in 2010 (a/k/a the "Second Commission"). In 2015, the Court re-established the Commission as a permanent body subject to review at five-year intervals (a/k/a the "Third Commission"). More information on the history and accomplishments of the Massachusetts Access to Justice Commission can be found on its website at http://www.massa2j.org/a2j/?page_id=591.

² A more extensive statement of the Commission's goals and strategies is presented in the Mission Statement in Appendix 1.

The Task Force fostered an extraordinary collaboration among more than 140 volunteers from a wide range of organizations, including legal services, the courts, social service organizations, the Boston Bar Association, and the Massachusetts Bar Association.

Other highlights from the Commission's work during the past year include the following activities.

- The Commission continued to implement ideas articulated in the 2017 Justice for All Strategic Action Plan,³ which the Commission helped develop in collaboration with a wide range of partners in the access to justice community. Focusing on the areas of housing, consumer debt and family law, the Commission engaged in numerous activities, including providing continued input to the respective courts on ways to improve access for self-represented litigants.
- This past fall saw the successful completion of two pilot projects, one in housing and the other in consumer debt, designed to test ideas proposed in the Strategic Action Plan and developed with a 2018 implementation grant from the Justice for All Initiative.
- At its October 22, 2019 meeting, the Commission discussed and endorsed the “Principles to Guide the Reconciliation of the Right to Counsel Bills,” (“Principles”) dated May 10, 2019. The Principles were developed by the Massachusetts Right to Counsel Coalition, which includes a broad base of supporters.
- Having completed a *Report of the Working Group on Possession and Use of Cell Phones and Similar Devices in the Courts of Massachusetts*⁴ in April 2019, the Cell Phone Working Group monitored the Trial Court’s progress in responding to the Report. By October 2019, half of the cell phone bans in the courts had been terminated. Effective July 13, 2020, the Supreme Judicial Court and the Trial Court adopted new orders temporarily prohibiting cell phone bans in any Massachusetts courthouse, due to the need for increased reliance on cell phones to communicate with courts and facilitate court proceedings during the COVID-19 pandemic. These new orders are consistent with the recommendations in the Commission’s April 2019 Report.
- The Commission continues to advance its 2018 communications strategy, which is designed to educate the public about the Commission's purpose, goals, activities and initiatives, and learn from the public about issues impacting Massachusetts communities that may warrant a systemic or collaborative response, whether local or statewide. Elements of the strategy have been applied to our COVID 19 Task Force activities with great success, enabling the Commission to bring together the voices and ideas of more than 140 volunteers and to maintain strong lines of communication throughout the access to justice community and beyond during this crisis.

³ The 2017 Justice For All Strategic Action Plan is located on the Commission website:

http://www.massaj.org/a2j/?page_id=811

⁴ The *Report of the Working Group on Possession and Use of Cell Phones and Similar Devices in the Courts of Massachusetts* is located on the Commission website in its “Library”: http://www.massaj.org/a2j/?page_id=9

- Topics of discussion at the Commission’s meetings in 2018-2019 were similarly useful in providing a foundation for our COVID-19 response. A presentation on research and design of a virtual Court Service Center now seems prescient, as Court Service Centers have had to quickly refashion operations to serve litigants remotely. A discussion of access to justice issues in connection with court based Online Dispute Resolution (ODR) in January led to formation of an ODR Committee this spring, as we anticipate that the pandemic will accelerate interest in this mode of dispute resolution in the courts.
- The Civil Appellate Pro Bono Program – a collaborative initiative involving the Commission, the Volunteer Lawyers Project, the Clerk’s Offices of the Appeals Court and the Supreme Judicial Court, and local law firms, in-house legal departments, and legal services organizations – continued to operate a weekly clinic at the Appeals Court providing free legal consultation to qualifying self-represented litigants, and full representation for an appeal in selected cases. Since its inception, 290 attorneys from 20 law firms have served 768 litigants through this program.
- The Commission continued to support the growth of the Access to Justice Fellows Program, which has now provided over 110,000 hours of pro bono services by 139 retired lawyers and judges to more than 80 nonprofit entities in Massachusetts.

The Commission's membership represents a range of constituencies, including judges, clerks, bar associations, legal aid organizations and their clients, social service agencies, government entities, the private bar, law schools, and businesses.⁵ Our work is accomplished through committees consisting of both Commissioners and committed non-member volunteers.⁶ We are grateful to the Commissioners and to all the committee members for their work during the past year. We also appreciate the support provided by Chip Phinney, Deputy Legal Counsel at the Supreme Judicial Court, and Jack Gilligan and Christian McGrew, Project Analysts at Mintz Levin.

Finally, thanks to the generous support of the Massachusetts Legal Assistance Corporation, we are pleased that Carolyn Goodwin, Esq. has joined the Commission as the first full-time Director. Carolyn succeeded Laura Gal, Esq. who had served in a consultant role for the prior two years. We are grateful that Laura has since joined the Commission as a Commissioner and is a member of the Executive Committee.

Hon. Ralph D. Gants, Chief Justice
Massachusetts Supreme Judicial Court

Susan M. Finegan, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.

Co-Chairs, Massachusetts Access to Justice Commission

⁵ See Appendix 2 for a membership list.

⁶ See Appendix 3 for Committees and leadership, and our website at <http://www.massaj.org/a2j/> for additional information.

I. IMPROVING ASSISTANCE TO SELF-REPRESENTED LITIGANTS

In many case categories involving families' and individuals' essential legal needs in Massachusetts, navigating the court system and the law without representation by a lawyer has become the norm. For example, in the Housing Court, nearly 64 percent of all litigants and nearly 89 percent of defendants were unrepresented in Fiscal Year 2019.⁷ It is generally reported that in the Probate and Family Court, at least one party lacks counsel in the majority of cases.⁸ In consumer debt actions, data from 2017 suggests that less than 1.5 percent of defendants are represented by a lawyer.⁹ The same pattern is seen nationally. Given this reality, a major focus of the Massachusetts Access to Justice Commission, like others across the country, has been to better understand and address the needs of self-represented litigants.

Self-represented litigants have been particularly impacted by the courts moving much of their operations to remote platforms as a result of the pandemic forcing them to close their physical buildings. The Commission's COVID-19 Task Force has specifically focused its energies on providing feedback and recommendations to the courts on how to best serve the needs of self-represented litigants, as well as finding ways to share information and resources on pandemic-related legal matters with self-represented litigants.

- **Massachusetts Access to Justice Commission COVID-19 Task Force:** Much of the COVID-19 Task Force's work, particularly through its **access to courts committee** and the **materials and communications committee**, has focused on the impact of the pandemic on the legal needs of and issues for self-represented litigants. Relying on the frameworks set forth in the Commission's 2017 Strategic Action Plan,¹⁰ the Task Force focused its efforts in the substantive areas of housing, consumer debt and family law.
 - **Access to Courts Committee:** This committee addresses issues related to the impact of COVID-19 on court processes and has worked collaboratively with the courts to address new barriers to access created by courts moving toward remote proceedings and legal/social service providers changing their service models and retracting from community-based settings. Consistent with ongoing activities of the Commission, the Committee focused on areas with high percentages of self-represented litigants: consumer debt, housing, and family law. The Commission's Housing, Consumer Debt, and Family Law Committees provided the structure and framework to effectuate much of the work of this Task Force committee.

Committee members met periodically with court leaders, including Chief Justices of the Trial Court divisions, to highlight concerns related to barriers to access,

⁷ Housing Court Department, FY 2019 Statistics, <https://www.mass.gov/doc/2019-housing-court-self-represented-represented-litigants-by-court-location/download>.

⁸ Massachusetts Justice for All Strategic Action Plan (Dec. 22, 2017) at 28, http://www.mass2j.org/a2j/?page_id=9.

⁹ *Id.*

¹⁰ The Strategic Action Plan was developed in collaboration with a wide range of stakeholders, including representatives from the courts, legal aid providers, bar associations, law schools, social service organizations, litigants, community groups, and others. Work on the Strategic Action Plan was made possible in part by a Justice for All grant from the National Center for State Courts funded by the Public Welfare Foundation.

including disabilities, limited English language proficiency, and lack of access to needed technology and home office equipment. A summary of the issues and their impact on litigation in housing, consumer debt, and family law was also presented to the Chief Justices in written memoranda. From March until June, the Committee met at least once a week, and often more frequently, to address the ever-changing landscape in these various issue areas. Regular meetings are ongoing, although now more of the ongoing work can be done between meetings and the frequency of meetings has correspondingly decreased. Committee members are also involved in developing processes for the continued remote operation of Court Service Centers and Lawyer for the Day Programs and have worked closely with the Boston Bar Association in developing remote proceedings best practice guides for practitioners, self-represented litigants and the courts. Committee members also provided input to the Massachusetts Bar Association on its remote proceedings best practices video. Importantly, Committee members strategize on solutions to access to justice issues that cross-over between consumer debt, housing and family law.

Finally, the Committee has cooperated with the Suffolk Legal Innovation and Technology Lab in its project to develop online guided interviews and fillable forms to assist self-represented litigants in accessing the courts. These newly-developed applications can be accessed from a computer or from a smart phone or other device and provide self-represented litigants with step-by-step written and audio assistance in completing necessary court forms. In addition, the applications offer links to other resources, including legal services, lay advocates and other community providers. We look forward to watching and supporting the use of these applications both in coordination with and independent of Court Service Centers and other self-represented litigant resource hubs.

- **Materials and Communications Committee:** This committee promotes the development and distribution of information to social service advocates and self-represented litigants on pandemic-related law and legal procedures.

Over the past several months, the Committee held three virtual question and answer sessions reaching a total of more than 700 social service advocates. Each session has focused on a specific area of concern including housing, working with immigrant communities, and family law. The Committee followed up by sending a survey to attendees designed to gather information on the experience of self-represented litigants in remote proceedings, as well as the most effective way to share information with self-represented litigants. The Committee also participated in a webinar with the Social Law Library and the courts for public librarians. Finally, the Committee produced informational videos on public benefits, the eviction moratorium, restraining orders, health insurance and court procedures and also developed a list of legal resources to share with the public both online and in print. The Committee has coordinated with the trial court to provide links between the court's webpage and these newly-developed resources.

- Much of the Commission's work, both in response to the pandemic and otherwise throughout this year, has been guided by the **2017 Justice for All Strategic Action Plan**. The Strategic Action Plan focuses on the needs of self-represented litigants in three substantive areas of law -- housing, consumer debt and family law -- plus a fourth category covering issues impacting the justice ecosystem as a whole. It describes the current resources and challenges in each of the four focus areas; proposes a vision of a legal system capable of providing meaningful access to justice in each domain; and identifies strategies for achieving that vision. This year the Commission's Justice for All Implementation Committee, with its four working groups: housing; consumer debt; family law and the ecosystem, evolved into four standalone committees geared toward furthering the Strategic Action Plan's goals.
 - **Housing Committee:** The Housing Committee continued to focus much of its efforts on providing the Housing Court with feedback from court users in the field to assist the Housing Court in its efforts to implement access to justice goals. This feedback included information on matters such as the development of the efilings system and on the Court's efforts to revise summary process forms and procedures. In addition, in a November 2019 article in the *Boston Bar Journal*, members of the Committee made a compelling case for the need for attorneys to represent tenants in housing court to ensure access to justice.

At the January 2020 Commission meeting, the Housing Committee presented research and produced preliminary recommendations regarding ways to reduce tenant defaults in housing court. Americorps volunteers worked collaboratively with the Housing Committee to track cases involving default, conducted field interviews of defaulting litigants, identified common obstacles, and proposed methods to remove or reduce the impact of these common obstacles.

Another sub-committee focused on issues facing self-represented litigants in **housing case appeals**. This sub-committee surveyed the landscape of resources available to self-represented litigants in the appellate process; reviewed existing laws and practices around appellate procedures in housing cases and identified areas of difficulty for self-represented litigants; and met with court administrators to discuss ways to best serve self-represented litigants. This work was paused at the outset of the pandemic.

The Housing Committee also worked with Suffolk Law School to provide substantive content to support the development of guided interviews that direct litigants through the process of creating forms that can be submitted to Housing Court.

During the pandemic, the Committee provided feedback to the Housing Court on the experience in the field, providing written memoranda and meeting many times with the Chief Justice of the Housing Court and other judges and administrators involved in developing the Housing Court's pandemic response. Further, given the current eviction moratorium set to end in October 2020, the Housing Committee

has been involved in envisioning how to handle housing cases post-moratorium both within the court and in terms of eviction diversion.

- **Consumer Debt Committee:** In the beginning of the Commission year the Committee focused on the reform of existing consumer debt rules including evaluating the impact of Rule 8.1 and 55.1. These rules established new requirements for claims to collect consumer debt in certain cases, and prevented non-complying plaintiffs from obtaining defaults or default judgments. Members of this Committee also submitted comments to the Trial Court on proposed revisions to the Small Claims Rules and associated court forms.

At the December 3, 2019 Commission meeting, the lead attorney for the Commission's JFA pilot project in consumer debt presented lessons learned and implications for expansion and replication of Lawyer for the Day (LFD) models going forward, including highlights of a new LFD program in the Springfield District Court. The Committee is currently involved in other efforts geared toward expanding LFD programs statewide.

Since the outset of the pandemic in Massachusetts in March, the Committee has been meeting at least weekly to respond to emerging issues impacting consumers. The Committee engaged in a range of strategies including legislative efforts; providing feedback to the courts from the perspective of the user; and focusing on reaching consumers, who had defaulted or had their wages garnished, to remedy unfair outcomes. Among its successes, the Committee's recommendations to the District Court and Boston Municipal Court provided support for: the courts to treat existing wage garnishment cases as emergencies; and for the decision not to schedule any small claims hearings before September 2020 without agreement of the parties.

- **Family Law Committee:** With the pandemic came an increased focus on access to justice issues in the family law area. As part of the Commission's COVID-19 Task Force, family law practitioners and advocates came together to address emerging issues. In June 2020, the Commission formally created a Family Law Committee to refocus on both short-term reform and long-term systemic changes that better enable self-represented litigants to access the judicial process. Leadership of the Committee and the Commission attend bi-weekly meetings with the administrative offices of the Probate and Family Court and the District Court to provide feedback on ways court processes can be improved to better serve self-represented litigants. Committee members have also been involved in a document assembly project to create fillable online 209A forms.

The Committee also successfully advocated for an exception in the Supreme Judicial Court's e-filing rule that allows for volunteers with the Lawyer for the Day Programs to sign on behalf of litigants.

- **Ecosystem Committee:** This year the members of the Ecosystem Working Group/Committee served as advisors to Community Legal Aid and the Massachusetts Law Reform Institute on a project to improve the functionality of the Massachusetts Legal Resource Finder, which provides low-income people in Massachusetts with a searchable comprehensive online directory of civil legal services, including over 80 civil legal aid, pro bono, non-profit, government, and court-based programs. The project is being funded by a Technology Initiative Grant from the Legal Services Corporation that CLA applied for and won with the Commission's support. The newly-renovated site is currently being tested in beta form, and a public launch is anticipated in fall 2020.
- **Justice for All Implementation Pilot Projects in Housing and Consumer Debt:** This past fall saw the successful completion of two pilots, one in housing and the other in consumer debt, both funded by a 2018 implementation grant from the JFA initiative.¹¹ These pilots, designed to test ideas proposed in the JFA Strategic Action Plan, demonstrate the strength of collaboration and the value of upstream intervention and support. Leaders from both of these pilot projects presented on outcomes and lessons learned at the December 3, 2019 Commission meeting.

In the housing pilot, Northeast Legal Aid and the nonprofit Lawrence Community Works established a Housing Stabilization Center to provide resources (such as access to emergency funding, supportive services, and mediated disputed resolution) to stabilize at-risk tenancies before an eviction case is filed. All 36 of the pilot participant tenants remained in their homes at the conclusion of the pilot and, through financial counseling, job training and referrals, participants enhanced their monthly incomes significantly – an average increase of \$731 per month.

In the consumer debt pilot, Greater Boston Legal Services (GBLS) worked with local community organizations to provide upstream education and training on consumer debt litigation prevention, as well as representation for consumer debt collection defendants in selected cases. Notably these partnerships have continued beyond the pilot, and GBLS and the Boston Tax Help Coalition have implemented a jointly-developed plan for cross training and referrals during the 2020 tax preparation season. GBLS also created and disseminated a set of online tools to assist end users and social services entities in addressing consumer debt before a court case is initiated or, where a case has been filed, before the next hearing date. GBLS lawyers also supported development and staffing of a Lawyer for the Day program led by the Volunteer Lawyers Project and in collaboration with the Dorchester Division of the Boston Municipal Court.

- **Cell Phones:** Based on significant research, including field trips to courthouses outside of Massachusetts, a Working Group of the Commission produced a *Report of the Working Group on Possession and Use of Cell Phones and Similar Devices in the Courts of Massachusetts* in April 2019. This Report concluded that cell phone bans create hardships,

¹¹ For a more detailed discussion of these JFA pilot projects, please see the Commission's 2019-2019 Report on Activities, the Housing Pilot Summary Report and the Consumer Debt Pilot Summary Report, all located in the "Library" on the Commission's website: http://www.mass2j.org/a2j/?page_id=9

especially for self-represented litigants, and that they should be phased out and replaced by alternative security measures, such as the use of magnetically locked cell phone pouches in courthouses with significant security concerns. The goal is that no person should be denied entry to a courthouse because they are in possession of a cell phone or other portable electronic device (PED).

This year, the Working Group monitored the Trial Court's progress in responding to the Report. By October 2019, half of the cell phone bans had been terminated, a pilot project was underway to test the use of the magnetically locked security pouches, and processes were being developed to exempt self-represented litigants. Effective July 13, 2020, the Supreme Judicial Court and the Trial Court adopted new orders temporarily prohibiting cell phone bans in any Massachusetts courthouse, due to the need for increased reliance on cell phones to communicate with courts and facilitate court proceedings during the COVID-19 pandemic. These new orders are consistent with the recommendations in the Commission's April 2019 Report.

In addition, with input from the Commission, the Supreme Judicial Court Advisory Committee on the Law of Evidence developed a guidance document addressing how judges should deal with digital evidence stored on cell phones and other personal electronic devices both in live and virtual hearings. The guidance has undergone review by a group of 25 sitting judges and soon will be made widely available in the on-line supplement to the Massachusetts Guide to Evidence.

II. INCREASING JUSTICE BY IMPROVING THE EFFECTIVENESS OF, AND THE FUNDING FOR, CIVIL LEGAL AID

The Commission has focused its energies on increasing justice by improving the effectiveness of, and the funding for, civil legal services organizations. Civil legal services programs in Massachusetts, like their counterparts nationally, continue to lack sufficient funding to meet the needs of the vast number of unrepresented litigants. One of the major funding streams for legal aid in the Commonwealth, Interest on Lawyers Trust Accounts (IOLTA), decreased significantly from \$31.8 million in 2007 to a low of \$4.5 million in 2014, in large part due to very low interest rates and the recession.¹² Over the past several years, the numbers have slowly increased to approximately \$11.9 million in 2019, but not near pre-recession figures. Moreover, as a result of the 2020 pandemic and the consequent lowering of interest rates, it is expected that IOLTA revenue will dramatically decrease this year.

Meanwhile, funding for Massachusetts civil legal services programs from the federal Legal Services Corporation (LSC) has remained virtually flat for the last decade (\$5.5 million in FY2009 vs. approximately \$6.0 million in FY2020).¹³

¹² Boston Bar Association, *Investing in Justice: A Roadmap to Cost-Effective Funding of Civil Legal Aid in Massachusetts* (Oct. 2014), at 15, <http://www.bostonbar.org/public-policy/civil-legal-aid-in-ma>

¹³ See *Legal Services Corporation: Background and Funding*, Congressional Research Service (Feb. 2, 2010), at 13, https://www.everycrsreport.com/files/20100202_RL34016_0a6fc07754a4b30c71439b29b406c1423a25a195.pdf; Legal Services Corporation, *Massachusetts State Profile*, <https://www.lsc.gov/grants-grantee-resources/our-grantees/massachusetts-state-profile>.

The Massachusetts Legislature has stepped in to increase aid for civil legal services significantly over the last several years, raising the state appropriation for the Massachusetts Legal Assistance Corporation (MLAC) to \$24 million for FY2020 from \$21 million in FY2019.¹⁴ As of the writing of this Report the legislature has not appropriated funds for MLAC for FY2021. While unknown, given the current pandemic-related recession it is not expected that state appropriations for legal aid will increase this fiscal year.

The unmet need for legal services remains great¹⁵ and is expected to increase given the impact of the current pandemic related recession on low-income populations. A recent study by the Legal Services Corporation (LSC) found that, already, its legal services grantees are reporting on average, a 17.9% increase in the number of eligible clients due to the pandemic.¹⁶ According to recent estimates, 861,043 people in Massachusetts – 12.9 % of the state population -- live below 125% of the federal poverty level (\$32,750 annually for a family of four), making them eligible for LSC funded civil legal aid.¹⁷ As a result of inadequate funding and significant need, legal aid programs in Massachusetts have been forced to turn away the majority of people who sought assistance.¹⁸ Compounding this issue is the simultaneous increase in need for civil legal services while funding streams are expected to decrease from sources like IOLTA, resulting from the COVID-19 pandemic and resultant decrease in interest rates.

The Commission has sought to address this need in many ways, including the following:

- **Civil Legal Aid for Victims of Crime (CLAVC):** The Commission worked with a coalition of state agencies and legal and social service providers to develop the Civil Legal Aid for Victims of Crime program (CLAVC), which has channeled \$18.6 million in federal funds to legal services organizations since FY 2018 to support attorneys, most recently 35-37 attorneys, who work directly with crime victims. This funding is the result, in part, of efforts by the Commission stretching back several years.¹⁹ As a result of these efforts, in 2017 the Massachusetts Office for Victim Assistance Office (MOVA) announced allocation of \$8.3

¹⁴ Massachusetts Legal Assistance Corporation FY2019 Annual Report, at 1: <https://mlac.org/wp-content/uploads/2020/03/MLAC-annual-report-FY19-spread.pdf>; <https://mlac.org/funding/>

¹⁵ Massachusetts Legal Assistance Corporation Fact Sheet (December 2019) <https://equaljusticecoalition.org/wp-content/uploads/2020/01/FY21-Factsheet.pdf>

¹⁶ LSC Survey Finds Major Impact of COVID-19 Pandemic on Legal Aid (July 24, 2020)

<https://www.lsc.gov/media-center/press-releases/2020/lsc-survey-finds-major-impact-covid-19-pandemic-legal-aid>

¹⁷ Legal Services Corporation, Massachusetts State Profile, <https://www.lsc.gov/grants-grantee-resources/our-grantees/massachusetts-state-profile>.

¹⁸ Massachusetts Legal Assistance Corporation Fact Sheet (December 2019), <https://equaljusticecoalition.org/wp-content/uploads/2020/01/FY21-Factsheet.pdf>

¹⁹ As discussed in the Commission's 2018-2019 Annual Report, the Commission was one of two state access to justice commissions nationally to lead an effort analyzing opportunities to tap federal funds, other than those allocated for the Legal Services Corporation, to meet the ongoing funding gap for civil legal aid. A large increase in federal funds – from less than \$10 million to more than \$40 million – flowing to Massachusetts from the Victims of Crime Act (VOCA) was identified as a potential source and, through an extensive community outreach and collaboration campaign, data on the need for increased legal services to assist victims was collected and the case was made to allocate new resources for a statewide legal assistance program. The Annual Report is located on the Commission website in its "Library": http://www.massa2j.org/a2j/?page_id=9

million from these funds to support civil legal services for victims of crime over the next two years and the state-wide CLAVC program was launched, adding more than 26 attorneys to legal services agencies to work directly with crime victims across the Commonwealth. An additional 4.2 million was granted in FY 2020 and 6.2 million in FY 2021, continuing support of 35-37 full-time attorneys for an additional two years or more. The CLAVC program is managed by the Massachusetts Law Reform Institute with oversight provided by the Massachusetts Legal Assistance Corporation (MLAC). The Commission, through its Revenue Enhancement Committee, is continuing to investigate opportunities for future funding from analogous federal sources as well as monitoring and participating in the dialogue around the federal CARES Act funding.

- **National Foundations:** Just as new sources of federal funding have significantly augmented funding for legal aid, the Commission recognizes national foundations could be an untapped resource for legal aid. The Commission’s Revenue Enhancement Committee has researched and engaged in conversations nationally about foundation support for legal aid and has also connected with two Access to Justice Fellows at the Management Information Exchange (MIE) on surveying private foundations to assess why or why not they fund legal aid.
- **Massachusetts Legal Assistance Corporation (MLAC):** Each year, the Commission has stood with other stakeholders in the access to justice community to support an increase in the state budget to fund civil legal aid through MLAC. To date, this FY2021 appropriation is not known.
- **Helped Establish Other New Funding Sources:** As highlighted in previous reports, the Commission has helped to establish other new funding sources for civil legal aid. The Commission was instrumental in the Supreme Judicial Court's approval of three new sources of revenue to support legal services: expanded eligibility of IOLTA and legal aid programs for receipt of *cy pres* awards of class action residuals under a 2008 amendment to Mass. R. Civ. P. 23, which has generated more than \$5 million; a voluntary annual \$51 "access to justice" attorney registration fee, which has generated over \$1 million annually since it was created in 2010; and a *pro hac vice* registration fee, which has generated over \$1 million since it was established through SJC Rule 3:15 in 2012. Effective January 1, 2019 the *pro hac vice* registration fee was increased by the SJC from \$301 to \$355 for the Superior Court, Land Court, and appellate courts.

III. INCREASING SERVICES PROVIDED BY PRIVATE ATTORNEYS

Massachusetts has a rich tradition of providing pro bono legal services. The state has a vast network of pro bono referral organizations covering a variety of legal issues, from political asylum to domestic violence to bankruptcy. The Commission continues to work closely with the Supreme Judicial Court’s Standing Committee on Pro Bono Legal Services (“Pro Bono Legal Services Committee”) to increase pro bono engagement. To facilitate coordination of the work of the Commission and the Pro Bono Legal Services Committee, the Pro Bono Legal Services Committee's Chair is an *ex officio* member of the Commission, and the Commission’s Director is an *ex officio* member of the Pro Bono Committee. Efforts to increase the ability of private attorneys to provide for-fee services to moderate- and low-income clients also continue through the work of

the Commission's Access to Attorneys Committee. During the past year, the Commission's work in this area has included the following activities.

- **The COVID-19 Task Force Pro Bono Committee:** The Pro Bono Committee of the Commission COVID-19 Task Force developed and launched the COVID-19 Pro Bono Portal, a collaborative, statewide tool connecting attorneys and law students to pandemic-related pro bono opportunities that serve low-income residents of the Commonwealth. The Portal is housed at the Volunteer Lawyers Project at MassProBono.org, a website developed ten years ago and dedicated to facilitating and enhancing the delivery of pro bono civil legal aid to persons of limited means. The COVID-19 Pro Bono Portal makes it easier for legal services organizations to match volunteer attorneys and law students with pro bono clients and has added several pandemic-related projects. After its initial outreach to numerous organizations throughout the state to survey and identify legal needs, the Committee helped facilitate the development of 15 novel pro bono projects. As the pandemic continues, this work is ongoing and will likely continue beyond the anticipated timeframe of the Task Force. With this in mind, the activities of the COVID-19 Task Force Pro Bono Committee will transition into a sub-committee of the Supreme Judicial Court Standing Committee on Pro Bono Legal Services where it will continue to expand on its work.
- **Access to Attorneys Committee:** The Commission's Access to Attorneys' Committee has continued with its implementation of ideas from its 2017 Access to Attorneys Committee report.²⁰ The Report offered recommendations including continuing to investigate apparent obstacles to the use of fee-shifting to serve lower-income litigants in the Housing and Probate and Family Courts, working with legal services agencies to develop fee-shifting practices in housing and consumer debt cases, tracking the use of LAR in Mass Courts, and implementing monthly fee-shifting networking initiatives.

During the past year the Access to Attorneys Committee has continued to pursue these ideas through several initiatives, including:

- Developed a Tenant Attorney Network, currently comprised of six attorneys, which recruits, trains and teaches attorneys to run tenant fee-shifting law practices
- Held monthly Brown Bag lunches on advanced topics in fee-shifting for lawyers
- Created a networking website for attorneys who have fee-shifting practices as a one-stop shop for information and resource sharing
- Supported, through supervision and training, an attorney with Community Legal Aid whose position is funded through the tenant fee-shifting statute
- Investigated ways to fund legal aid through fee-shifting statutes
- Worked with attorneys to develop stronger fee-shifting practices in the areas of consumer debt

²⁰ In May 2017, the Commission's Access to Attorneys Committee issued, and the Commission endorsed, a report exploring means for increasing the number of private attorneys who choose to represent low- and moderate- income clients who could not afford a traditional retainer and full representation arrangement. This report is located on the Commission website in its "Library": http://www.mass2j.org/a2j/?page_id=9

- Engaged in two data collection projects to research why there are a lack of lawyers engaged in fee-shifting work in Housing Court and Probate and Family Court
 - Commissioners discussed the role of fee shifting practices, particularly in the housing context, on increasing access to legal services at the December 3, 2019 Commission meeting
- **Access to Justice Fellows Program:** The Commission has been instrumental in sustaining the Access to Justice Fellows Program in Massachusetts and facilitating its replication in states across the country. Established in collaboration with the Commission in 2012, the Access to Justice Fellows Program partners retired or retiring lawyers and judges with legal services organizations and other nonprofits. The Program, now run by the Lawyers Clearinghouse, provides a unique opportunity for these lawyers and judges to use their specialized skills and experience to do engaging pro bono work. Fellows spend an academic year volunteering 10-20 hours per week on a significant pro bono project in furtherance of access to justice. Since inception the program has supported 139 Fellows. Current and former Fellows have provided over 110,000 hours of pro bono service to more than 80 different entities.

The Commission is proud to have incubated the Fellows Program, an innovative approach to increasing the number of pro bono participants and the number of pro bono hours per participant. Our ultimate goal for the program is to have every member of the bar, when contemplating retirement, consider providing pro bono service during a fellowship year. Meanwhile, interest in replicating the program elsewhere continues to grow.

- **Statewide Civil Appellate Pro Bono Program:** The Commission has continued to provide support for the statewide civil appellate pro bono program. In 2014, when the Commission became aware of pro bono appellate initiatives for unrepresented litigants in 14 other states, a committee of bar leaders, legal services attorneys, and appellate judges reviewed best practices and studied the feasibility of a program in Massachusetts. The committee found, among other things, that the Appeals Court Clerk's Office received phone calls each day from approximately 40-50 unrepresented litigants. As a result of this study, the Commission initiated a pilot Civil Appellate Pro Bono Program at the Brooke Court Service Center in Suffolk County. The program was so successful it expanded statewide in December 2015.

The program has three elements: a weekly civil pro bono appeals clinic at the Appeals Court Clerk's Office, a merits review panel, and full representation. Collaborators in this important initiative include the Commission, top area law firms, the Volunteer Lawyers Project, numerous other legal services organizations, and the Clerk's Offices of the Appeals Court and the Supreme Judicial Court. As of July 2020, 290 attorneys from 20 different law firms have helped 768 low income litigants navigate the civil appellate process.

STRATEGIC REVIEW

When the 2015 Commission was approved in January 2015, the memorandum recording that approval stated that "[t]here will be no sunset provision for the next commission, but membership and mission will be reviewed after 5 years."

At its August 2020 annual retreat, the Executive Committee reviewed the March 1, 2015 Mission Statement (attached as Appendix 1) and decided to update its Mission Statement to reflect the rapidly changing world in which we are living. The revised and updated Mission Statement, dated August 12, is attached as Appendix 4.

In addition, this year the Executive Committee of the Commission formed a membership sub-committee to review membership and develop both short- and long-term strategies to ensure Commission sustainability and encourage leadership development. As part of this process, the membership sub-committee highlighted the need to consider diversity and inclusion when considering nominations for Commission membership.

CONCLUSION

The year brought many unexpected challenges and stressors to our civil justice system. As we continue to evolve and problem solve, we are grateful to our Commissioners and other collaborators for collectively working to ensure that the civil justice system is accessible to all. As we continue onward we are proud of the Commission's ability to pivot and adapt and look forward to another productive year.

APPENDIX 1

Massachusetts Access to Justice Commission Mission Statement March 1, 2015

The goal of the Massachusetts Access to Justice Commission is to achieve equal justice for all persons in the Commonwealth. It strives to accomplish this goal by providing leadership and vision to, and coordination with, the many organizations and interested persons involved in providing and improving access to justice for those unable to afford counsel.

The Commission will pursue its mission by various means including the following:

1. Strengthening the civil legal services community in providing legal services for those unable to afford counsel.
2. Enlarging the number of attorneys trained, willing, and able to provide pro bono civil legal services.
3. Enlarging the number of attorneys in the private bar trained, willing and able to provide civil legal services through limited assistance representation or other means to low- and moderate- income individuals who are unable to afford legal representation and unable to obtain legal aid representation.
4. Enlarging the number of non-lawyers trained, willing and able to provide appropriate assistance to improving access to justice.
5. Improving the ability of those without counsel to identify, articulate and present their legal claims and defenses in civil judicial and administrative proceedings.
6. Working closely with the Chief Justices of the Supreme Judicial Court and the Trial Court, the Trial Court Administrator and the Special Advisor to the Trial Court on Access to Justice Initiatives to broaden access to justice within the court system.
7. Coordinating the efforts of the broad network of legal, social service and administrative organizations and interested persons who seek to improve access to justice by (a) sharing information regarding successful programs, approaches, and strategies in delivering civil legal services to those unable to afford counsel, (b) identifying best practices and technologies for delivering such legal services, (c) determining the changing legal needs of those unable to afford counsel, as well as enduring unaddressed and under-addressed legal needs and (d) developing goals and strategies for meeting those legal needs.
8. Reviewing the state of access to justice in Massachusetts, educating the public about access to justice and providing a neutral forum in which important issues affecting access to civil justice can be discussed among the branches of government and the civil legal services community, including a broad cross-section of providers, funders, clients, bar leaders and other interested parties.

9. Reporting annually to the Supreme Judicial Court on the status of access to justice in the Commonwealth, including recommendations for reforms and Commission goals and activities.

The success of the Commission will be measured by the extent to which persons can more effectively present their claims and defenses in our courts and administrative agencies, regardless of income or language ability.

APPENDIX 2

Members of the Massachusetts Access to Justice Commission, 2019-2020²¹

Honorable Ralph D. Gants, Co-Chair	Georgia Katsoulomitis, Esq.
Susan M. Finegan, Esq., Co-Chair	Honorable Antoinette E. McLean Leoney
Adrian Angus, Esq.	Jonathan L. Mannina, Esq.
Shannon M. Barnes, Esq.	Honorable Richard McMahon
Jacquelynne J. Bowman, Esq.	Jennifer Grace Miller, Esq.
Marijane Benner Browne, Esq.	Leemarie Mosca
Esme Caramello, Esq.	Susan Nagl, Esq.
Jeffrey N. Catalano, Esq.	Kate Oberlies O’Leary, Esq.
Honorable Fairlie A. Dalton	Clerk-Magistrate Anthony Owens
Russell Engler, Esq.	David Rosenberg, Esq. (<i>ex officio</i>)
Elizabeth Ennen, Esq.	Mary Ryan, Esq.
Honorable Dina E. Fein (<i>ex officio</i>)	James D. Smeallie, Esq.
Joel H. Feldman, Esq.	Gladys Vega
Laura Gal, Esq.	Marilyn J. Wellington, Esq.
Benjamin Golden, Esq.	Honorable Valerie Yarashus
Richard Johnston, Esq.	

Director

Carolyn Goodwin, Esq.

Analysts / Administrative Support

Jack Gilligan

Christian McGrew

²¹ This list includes all Commissioners who served at any time between August 1, 2019 and July 31, 2020. It does not include new Commissioners appointed in July 2020, but whose work on the Commission began after July 31, 2020. We would like to thank our Commissioners whose terms ended during this past year: Judge Antoinette Leoney, Judge Fairlie Dalton, Jonathan Mannina, Georgia Katsoulomitis, Kate O’Leary, and Shannon Barnes.

APPENDIX 3

Committees of the Massachusetts Access to Justice Commission, 2019-2020

The Commission seeks to further the strategies set forth in the Commission's Mission Statement through various committees, each chaired or co-chaired by a Commissioner. The Commission may also establish certain ad hoc working groups from time to time. The Commission's work is overseen by the Executive Committee.

Executive Committee

Chaired by: Commission Co-Chairs Chief Justice Ralph Gants and Susan Finegan

This committee oversees the work of the Commission overall, the work of the committees, and the annual report to the Supreme Judicial Court.

Access to Lawyers Committee

Chaired by: Commissioner Joel Feldman

This committee seeks to increase access to attorneys for litigants who are either below the poverty level or above the poverty threshold, but still lacking income sufficient to be able to afford a lawyer. Efforts include promoting use of fee-shifting statutes and Limited Assistance Representation, including understanding what impacts current use and exploring avenues to increase use in both pro bono and for-fee models.

Communications/Engagement Committee

Chaired by: Commissioners Marilyn Wellington and Jennifer Grace Miller

This committee aims to inform the public of the purpose and activities of the Access to Justice Commission; educate the public on the Commission's mission and activities; learn from the public and stakeholders about issues that may warrant a systemic response or collaborative response; engage current Commissioners and potential future Commissioners with the Commission's activities; and engage other stakeholders with the Commission's activities.

Consumer Debt Committee

Chaired by: Commissioner Ben Golden and Ariel Clemmer

This committee engages in a range of related systemic reforms concerning the substantive practice of consumer debt law, addressing many of the reforms suggested in the Justice for All Strategic Action Plan as well as continued emerging issues.

COVID-19 Task Force

Chaired by: Commission Co-Chair Susan Finegan

This task force, overseen by a leadership committee, addresses issues related to the impact of COVID-19 on court processes, including barriers to access created by courts' moving toward remote proceedings, with a focus on three areas with high turnout of self-represented litigants: consumer debt, housing and family law. Comprised of volunteers from legal services, private bar, courts, social service organizations, the Boston Bar Association and the Massachusetts Bar Association, the Task Force created three committees, involving over 140 volunteers: a materials and communications committee; an access to courts committee; and a pro bono committee. The committee also includes leadership from the Commission's Consumer Debt, Housing and Family Law Committees.

Ecosystem Committee

Chaired by: Rochelle Hahn and Gordon Shaw

This committee focuses on identifying improvements in our statewide delivery system that would foster collaboration and coordination among the various individuals, organizations, institutions, materials, technologies, practices, and infrastructure that comprise the legal help ecosystem. A key part of this strategy is engaging and sharing legal information with social services providers and advocates as a way to reach self-represented litigants, an agenda which has been advanced recently through our COVID-19 Task Force. This committee also has a specific focus on utilizing technology as a tool to increase access to justice.

Family Law Committee

Chaired by: Commissioner Laura Gal and Naomi Mann

This newly-constituted committee engages in a range of related systemic reforms concerning the substantive practice of family law, addressing many of the reforms suggested in the Justice for All Strategic Action Plan as well as continued emerging issues.

Housing Committee

Chaired by: Commissioner Esme Caramello and Jane Edmonstone

This committee engages in a range of related systemic reforms concerning the substantive practice of housing law, with a particular focus on summary process (eviction), addressing many of the reforms suggested in the Justice for All Strategic Action Plan as well as continued emerging issues.

Online Dispute Resolution Committee

Chaired by: Commissioner Mary Ryan

This newly-formed committee will focus both broadly on the access to justice implications of court-based Online Dispute Resolution (“ODR”) as it impacts self-represented litigants as well as recommendations for implementing ODR in the non-debt-collection realm of small claims. The Committee will examine this narrow implementation and use this example to consider access to justice issues in connection with possible expansion of ODR.

Revenue Enhancement Committee

Chaired by: Commissioners Susan Nagl and Marijane Benner-Browne

This committee identifies ways to increase the funding of civil legal aid through innovative means, including investigating new sources of state funding, federal funding, foundation funding, and private philanthropy.

CURRENTLY INACTIVE COMMITTEES²²

Criminal-Civil Crossover Committee

This committee has investigated gaps in legal services at the intersection of the civil and criminal justice systems and is working to identify opportunities for greater coordination, replication of localized best practices, and expansion of legal assistance for civil legal issues affecting persons involved in the criminal justice system.

Delivery of Legal Services Committee

This committee considers the civil legal services delivery system as a whole and seeks to identify opportunities for systemic improvement.

Self-Represented Litigants Committee

This committee seeks to identify and support improvements to the justice system for those who do not have a lawyer.

²² Currently inactive as committees but may maintain some ongoing projects.

APPENDIX 4

Massachusetts Access to Justice Commission Mission Statement August 12, 2020

The goal of the Massachusetts Access to Justice Commission is to achieve equal justice for all persons in the Commonwealth. It strives to accomplish this goal by providing leadership and vision to, and coordination with, the many organizations and interested persons involved in providing and improving access to justice for those unable to afford counsel.

The Commission will pursue its mission by various means including the following:

1. Strengthening the civil legal services community in providing legal services for those unable to afford counsel.
2. Enlarging the number of attorneys trained, willing, and able to provide pro bono civil legal services.
3. Enlarging the number of attorneys in the private bar trained, willing and able to provide civil legal services through limited assistance representation or other means to low- and moderate- income individuals who are unable to afford legal representation and unable to obtain legal aid representation.
4. Enlarging the number of non-lawyers trained, willing and able to provide appropriate assistance to improving access to justice.
5. Improving the ability of those without counsel to identify, articulate and present their legal claims and defenses in civil judicial and administrative proceedings.
6. Advocating for and prioritizing racial equality and justice in our civil legal system to ensure that equality under the law is an enduring reality for all. This includes combatting both explicit and implicit bias and systemic racism, and identifying and eliminating barriers that might prevent people of color from obtaining appropriate relief within the civil justice and administrative justice systems.
7. Ensuring equal access to the civil justice and administrative justice systems for those without lawyers in remote/virtual court proceedings including people with barriers to participation, such as limited access to legal advice, guidance, and information, limited access to computers and the internet, limited English language proficiency, and physical and cognitive disabilities.
8. Coordinating the efforts of the broad network of legal, social service and administrative organizations and interested persons who seek to improve access to justice by (a) sharing information regarding successful programs, approaches, and strategies in delivering civil legal services to those unable to afford counsel, (b) identifying best practices and technologies for delivering such legal services, (c) determining the changing legal needs of those unable to afford counsel, as well as enduring unaddressed and under-addressed legal needs and (d) developing goals and strategies for meeting those legal needs.

9. Reviewing the state of access to justice in Massachusetts, educating the public about access to justice and providing a neutral forum in which important issues affecting access to civil justice can be discussed among the branches of government and the civil legal services community, including a broad cross-section of providers, funders, clients, bar leaders and other interested parties.
10. Working closely with the Chief Justices of the Supreme Judicial Court and the Trial Court, the Trial Court Administrator and the Senior Manager for Access to Justice Initiatives within the Trial Court to broaden access to justice within the court system.
11. Reporting annually to the Supreme Judicial Court on the status of access to justice in the Commonwealth, including recommendations for reforms and Commission goals and activities.

The success of the Commission will be measured by the extent to which persons can more effectively present their claims and defenses in our courts and administrative agencies, regardless of income or language ability.