



## MINUTES

November 6, 2015

Civil Justice Committee Meeting

Duke University Law School

**Commission Members Attending:** David Levi, Darrell Miller, Sheila Eley, Robert Harrington, George Hausen, Ed Gaskins, Judge Calvin Hill, Anne Lloyd, Mike Mitchell, Judge Osmond Smith

**Also Attending:** Will Robinson, John Williams, Eloise Williams, Emily Portner, Danielle Seale, Barbara Moore (Conference of Clerks of Superior Court), Amanda Lacroff, Corye Dunn (Disability Rights NC), Jeff Jandura (Land Loss Prevention Project), Jim Barrett (Pisgah Legal Services), Rick Glazier (NC Justice Center), Evelyn Pursley (NC IOLTA, program of the NC State Bar), Mary Irvine (NC Equal Access to Justice Commission), Jennifer Lechner (NC Equal Access to Justice Commission), Celia Pistolis (Legal Aid NC)

### Meeting opened at 10:30am

Levi asked to approve the minutes.

Corrections by Smith. Motion, second, minutes accepted unanimously with changes.

Levi suggested possible focus on low hanging fruit: E-filing, law clerks pool, State Rules Enabling Act, some amendments to case assignment system for purposes of continuity.

Celia Pistolis and Rick Glazier gave their presentation on "Civil Legal Aid in North Carolina"

Pistolis: Explained what Equal Justice Alliance is.

First Legal Services opened in 1962. NC has long been involved in making sure people in poverty have access to legal services.

Gave dates of beginning of various providers of legal services. Poverty concentrated in metro urban areas. Triangle, Triad, Charlotte Mecklenburg, Asheville area

Special populations served:

- 1.2 Million Seniors 60 and over qualify for civil legal services

- Vets. 750,000 in NC median age 61. 35% served in Vietnam.
- Farmers. Land Loss Prevention Project represents farmers to protect their land and support small business growth. Farmworkers. Funded by specific federal grant for safe and sanitary conditions for workers. 150,000 migrant workers during growing season in NC.
- Represent immigrants that are victims of trafficking, those seeking asylum, or seeking redress for unlawful treatment.
- Inmates are also clients. Medical care access, conditions of confinement representation.

How to apply for services? Offsite locations, community organizations, senior centers, hospitals, homeless shelters, community centers, and online access and application. Online process is an application that they fill out and goes to hotline. Get call back for further screening.

Private attorneys provide pro bono services.

By mail (usually inmate access)

Referrals from attorneys, social services, clerks of court, domestic violence (DV) shelters.

Will asked question re: availability of online chat

Pistolis: no.

Hausen: online services in experimental stage, and handful of intakes with Zoom, like Facetime. Don't do chat because of literacy issues.

Pistolis: Most members are statewide. Some more geographically focused within NC. (On map in presentation)

Not every county or judicial district has a physical office for a legal aid provider.

Transportation is difficult for our clients, particularly those in the Outer Banks and in the West and the mountains where they live far from an office and public transit is not available.

Who gets help? 70,000 ask, 35,000 don't get a lawyer, for the most part they qualify, but organizations can't serve them.

What do they do? Legal advice, limited legal services (writing letter to landlord, preparing wills for seniors, preparing pro se docs), litigation, appeals, advocacy targeted to systemic issues for clients (Justice Center does class actions and impact litigation, involved in briefing and amici)

Limited legal services providing counseling to farmers, business planning, business entities, contract review, counseling about availability of federal programs,

Provide services that allow efficiency to the court system.

Levi: How do the legal services providers identify the group they're not going to represent, even if they qualify.

Pistolis: The unserved are determined by case type, resources, attorney time. Keep answering phone, but try to figure out how to add that one additional client. Try to obtain some advice or referral. Don't have enough staff to provide service to everyone who needs and qualifies.

Hausen: Other methods include triage, central intake, 50,000 phone calls annually, supervising attorney screens, local office looks it over; if they can't take it, refer back, then try to send it somewhere else.

Pistolis: 3,000 pro bono attorneys don't address all the need. Eligible client pool of 4 million.

Harrington: How disbursed the pro bono attorneys compared to clients and potential clients?  
Concentrated in cities?

Pistolis: More need in metro area, fewer resources in the rural areas.

Gaskins: Participate in the Lawyer on the Line program, providing advice by phone to individuals who are often in rural areas. Private lawyer gets an email from legal services: can you help? I.e. landlord tenant, client may be anywhere in the state, talk with her, give some advice and guidance, and that is the extent of obligation, if Ms. Jones has legitimate claims against landlord, not obligated to represent her in court.

Hausen: E-filing would eliminate the geographic problem of attorneys, and balancing between staff and pro bono, allow them to practice anywhere.

Pistolis: Legal Aid of North Carolina participated in 622 education events covering a range of practice areas

Mitchell: How much services are for legal needs related to dispute/proceeding (how much federal/state) how much other?

Pistolis: Clients often think they are in a dispute. Sense is majority of clients have, or think they have, a dispute. Another percentage need help with denial of benefits or other services (like immigration). Some percentage have an administrative avenue to get some kind of benefit, food stamps, visa, social security benefits.

Glazier: A lot of educational time spent to avoid disputes. May be on advice on legal advice side, try to stop something that may become a dispute.

Hausen: 50,000 calls, 15,000 legal advice cases which take about 3 hours each.

Gaskins: Large percentage landlord tenant?

Hausen: Yes. 30% housing.

Levi: Important issue, because some things are not disputes; writing wills, advanced directives.

Barrett: With budget cuts, programs are eliminating some work that doesn't involve basic needs. Domestic violence (one third of cases), disability, and other basic needs issues are the primary focus. Basic needs issues are not recognized as having a legal solution.

Hausen: Never advertised telephone number, and still get 50,000 calls.

Pistolis went over how volunteer attorneys help. Now have moved to incorporating private attorneys into presentation to clients by using technology like Zoom. 1 lawyer, but presentation broadcasted to 10 different locations where 10 different groups can view. Last year 3,000 attorneys provided average of 6 volunteer hours per year.

Smith: Movements for compulsory Pro bono?

Pistolis 50 hour goal in Rule 6.1 was implemented, last time state bar looked at mandatory pro bono. Not met with enthusiasm by bar.

Hausen: Mandatory reporting may be preferable rather than mandatory pro bono, because mandatory pro bono may hurt idea of pro bono.

Harrington: What has been done for the mismatch with young lawyers looking somewhere to go and pro bono needs?

Pistolis: Did recruitment for intern and fellows program at different law schools. Difficulty with mismatch when people just out of law school, requires a lot of supervision, need to be with you a minimum of 6 months to start being a positive for the firm. Don't have the staff to absorb the new admittees who are unemployed or underemployed.

Harrington: Young untrained lawyers looking for what to do, and maybe law schools could have students practice ready.

Pistolis: More clinical programs maybe. Duke and Legal Aid have a good partnership.

Levi: Mentioned Charles Holton and Duke's clinics. But these cases are complicated, a law school can't train them for all the complexities, except in the environment of a clinic. One way to think about it, if have a lot of new lawyers looking for work, and if have people just retired and looking to make a contribution, maybe that is a model.

Gaskins: Has a seven person law firm, always have pro bono extern from Campbell. Take legal aid cases, mostly landlord tenant. Teach pro bono extern how to deal with these cases. Need to have law firms assist the laws schools and legal aid in training the law students. Plus, privilege to deal with young people. They are there full time for the semester, getting credit, but not paid. And can only work pro bono.

Pistolis: Discussed cases they handle in presentation.

- Consumer protection: debt collection defense, mortgage foreclosure, repossessions, student loan cases, sometimes IRS tax.
- Education: special ed, school discipline;
- Employment: unemployment insurance, unsafe job conditions, expungements, unfair terminations, licensing discipline defense including driver's license;
- Family: Domestic violence, some child custody (if related to DV), sometimes emergency Child Custody, Some Hague Convention cases;
- Health: 3 members very engaged in outreach and enrollment, understanding obligations, enrollments, and explain choices been a large part of health practice, Medicaid and also Health Choice;
- Housing: wrongful evictions, FHA cases, poor conditions, preserving housing subsidies;
- Immigration: primarily visas with DV victims, green card status, asylum, deferred action for children (DACA), special immigrant juvenile status, family petitions;
- Income maintenance: food stamps, supplemental security benefits, work first (welfare), Veterans Benefits, military discharge upgrade issues, dependency

Challenges:

Low salaries, avg. \$40,000 for starting attorney, issue of loan repayment compared to average law school debt of \$100,000

High caseloads, because have difficulty saying no, but leads to compassion fatigue.

Limited litigation budgets. Can't look to client to pay for cost to depose someone.

No support staff.

Fund raising, takes time and staff time.

Funding restrictions, governmental restrictions, funders who restrict (only DV case, only X kind of case, and reporting requirements to those funders)

Clients have personal limitations that affect how we can serve them, also technological impediments (limited access to phones, computers) or have someone with 3 or 4 phone numbers, same with addresses, clients rent and sometime evicted, literacy issues.

Mitchell: Technology for translation?

Pistolis: some staff are bilingual, use telephone interpretive service, people in academic world who volunteer.

Hausen: Some google technology for videos into another language.

Smith: Trying same in courtroom.

Hill: Sometime have to search to get what you want.

Pistolis Closed 35,000 cases in 2014, represented nearly 50,000 clients each year, total household members 90,000

How funded? Federal state and local gov, NC IOLTA, private foundations including bar associations, individual donations. But funding is down.

As a result, organizations have 8 dollars per poor person for legal services. Need restoration of recent cuts.

In raw dollars, Hausen says to restore to 1996 levels in present dollars, \$700 million.

Pistolis State funding 2008, \$5.6 million; last year \$2.7 million.

Hausen: Case filings and court fees in district court have gone down. Not getting a bigger percentage. Got court fees restored, but not the appropriation. Eliminated, but had already gone down.

Who benefits from legal aid: 50,000 clients; court system in all 100 counties; all communities in North Carolina.

Challenges of clients: knowledge, where to go, personal limitations, geography, eligibility for services, case type.

Pistolis gave example of typical client. (Most clients are working poor). Almost none are required to pay any part of the cost.

Levi: Part two will be about suggestions of what to do.

**12:05 Broke for Lunch**

**12:40 Reconvened Meeting**

Rick Glazier, Executive Director NC Justice Center and Vice Chair, Equal Justice Alliance makes presentation.

Want to give the committee some menu of options. Culled down from over 30 recommendations from partners down to about 10. Because early in batting order, would ask to be able to supplement later.

Need to restore and increase state funding. \$5.6 million down to \$2.7 million with more clients needing access, in combination with federal cuts. Could happen incrementally. If not restored, simply tinkering at the margins.

Levi: Possible \$1 spent on legal services is more than \$1 saved in social services, avoid injury, save courts?

Glazier: Yes, exactly the truth. Exactly the discussion at last Alliance meeting. Texas is a prime example of where they've got real understanding on where savings are from putting money into legal services. Experience is that pro se filings take a lot of resources in the court system. Legal aid cuts down on those costs.

Hausen: Study on return on investment on legal services given to committee.

Levi: Academic help may be useful here. Lots of money comes from federal dollars, and saves the state money by keeping folks out of abject poverty.

Glazier: In 2014 NC had the 12th highest poverty rate in the nation, significantly higher than national average. 723,000 people in deep poverty. Race, gender, and geographic numbers. Single women, represent significantly higher no. in poverty. 45 counties in NC have higher poverty rates than state average, and higher than last year. 12% poverty in Orange County, 48% poverty in Edgecombe County.

Short term recommendation:

Consolidate domestic violence court cases on particular day, especially when multiple counties are within a judicial district, to improve scheduling (access and scheduling matter for legal aid, and for clients)

Provide legal aid organizations free access to ACIS (Automated Criminal Infraction System).

Disproportionately low income and minority. Access issues become important for expungement matters. Large expungement proposal coming up in the NC General Assembly, would give far more expungement opportunities. Barrier to this kind of relief is no full access to records. District Attorneys, public defenders, and bail bondsmen have full access, but not Legal Services. Limited access with local public terminals for free but there are fees associated with private use.

Mitchell: How much money?

Williams: Access to ACIS is a purchase product, essential part of maintaining court technology, may be appropriate to approach it in that sense, as e-courts model moves forward, shouldn't be a revenue generator, but that special fund supports 50 positions. What is funding philosophy for funding technology in courts? If aggregator of records, need to have the information meaningful. Noted that expungement actually can require physically cutting microfiche.

Glazier: If expungement bill passes, there are AOC costs, etc. because someone has to do this work and put in the time. Awful lot of expungement issues, but full expungement does not occur because of these technical issues.

Levi: Other issue is about funding and revenue from data aggregators.

Mitchell: Legal aid pays how much for each line-item?

Williams: May be difficult to get.

Glazier: Will try to get.

Levi: Need to know what free access really means if we make such a recommendation.

Glazier: Will try to get.

Short-term Recommendation: Clarify orders of indigency throughout case, including mediation. Mediation is an issue and paying money for the mediation is issue.

Barrett: Provision in superior and district court request for waiver of mediation costs, not same as indigency filing, it would be nice if these were consistent, indigent for mediation and indigent for the court as well.

Pistolis: some counties require to file more than one certificate of indigency; indigency should be for all fees in the case.

Glazier offered Intermediate recommendations:

Improve pro se forms and instructions, a form complaint for unpaid wages for small claims court (or forms for claim rebate from landlord, landlord tenant cases, summary ejection cases); forms don't exist for low income people and common cases, would be helpful for the clients and the magistrates.

Independent study of civil legal needs in NC. Committee is a part of it, but not tasked with this, work with Duke or law schools throughout the state. Study about unmet legal needs which hasn't been done since early 2000s.

Gaskins: Thinks middle class may be underserved as well. So that's why we need this kind of study.

Glazier: Misperception that who is likely to become indigent and would need legal services.

Training magistrates, judges and clerks, on annual basis on topics that disproportionately affect low income residents. Would help in consistency. Example, expungement cases.

Continue to improve language access and make courts more accessible to people with disabilities.

Long term recommendations:

Video conferencing in limited proceedings, DV, arbitration, and custody mediation. Moving that way on criminal side, but not on the civil side.

Develop electronic filing of pleadings.

Restore funding for NC LEAF that provides repayment assistance for lawyers doing civil legal aid, allows to retain and train staff. Small amount of money for increasing access. \$500,000 appropriation eliminated..

Levi: Email why we need NC LEAF given the federal loan forgiveness program.

Glazier: Will do so.

Pistolis: Even with loan forgiveness, still have to pay.

Levi: Can get federal loans, and if work for 10 years entirely forgiven. Just need to know how this works to utilize these resources.

Dunn: LEAF allows public interest employers in NC to retain good lawyers. The program gives some control over where the support for these lawyers will come from.

Smith: Asked about compensation for legal aid compared to government lawyers.

Pistolis: around \$40,000 to start.

Moore: \$38,000 to \$44,000 for defenders or prosecutors.

Glazier: Legislature doesn't have as many lawyers as it once did. A recommendation that need to engage lawyers in service. Awfully hard for any lawyer to practice much to serve on the legislature. Need more colleagues to offer 2, 4, 6 year commitments to the legislature.

Barrett: Several studies on civil legal problems with families in poverty. Studies find poor people experience 3 legal issues a year.

Hausen: Point of spear needs to be lawyers. Not kiosks, hot docs, etc.

Smith: Need to convince powers that be on the economics and savings.

Levi: Does AOC have authority to issue binding forms that the judge has to follow.

Williams: No. AOC forms reviewed by legal.

Hill: Forms are well researched.

Williams: Forms recommendation would not need extra authority.

Smith: Forms committee does great job, shouldn't take legislative authority.

Levi: Why aren't attorneys running for office?

Gaskins: Compensation hasn't increased since 1980 and sessions get longer.

Glazier: Legislators paid approx. \$13K per year. Income loss \$50K to \$75K. Firm gave up income as well. Problem of length of sessions is enormous. Only 1 full-time staff member. Plus has to campaign. Polarization issues, creates strain that wasn't there 20 or 25 years ago.

Robinson: Some counties with net loss of attorneys, creating a legal desert in rural regions. Pool of potential legislators that may affect bench.

Mitchell: All private attorneys percentage per year of pro bono wouldn't help?

Hausen: Not likely to create support, and create more animosity. Don't see mandatory pro bono is going to solve the problem.

Levi: Domestic violence docket?

Hausen: Both civil and criminal docket.

Hill: Both of those dockets are out of hand. Process of implementing DV comprehensive program. Criminal DV calendar on Wed. Sometimes 3 or 4 judges necessary. Thurs Civil DV calendar.

Hausen: Local office may only be able to take one county. 44K petitions per year.

Barrett: AOC, clerk help, if certain dates were set when cases civil or criminal heard, may help.

Hill: Some excellent legal aid attorneys help with civil and criminal DV cases who can usually resolve the case with dismissal or consent order.

**Adjourned 1:33**