

AGENDA ITEM

165 JULY 2015

DATE: July 3, 2015

TO: Members, Stakeholder and Access to Justice Committee
Members, Board of Trustees

FROM: Civil Justice Strategies Task Force

SUBJECT: Civil Justice Strategies Task Force Report and Recommendations – Return from Public Comment

EXECUTIVE SUMMARY

In November 2013, the State Bar Board of Trustees approved the creation and appointment of the Civil Justice Strategies Task Force (CJSTF) as a special committee of the board.

The charge of the task force was to analyze the reasons for the existing “justice gap,” to evaluate the role of the legal profession in addressing the crisis, to seek the input of groups who have been working to expand access to justice to understand what efforts have worked and which have not been successful, to study creative solutions being considered in other states and other countries, and to develop an action plan with recommendations for steps that should be taken to fill the justice gap and achieve true access to justice in California.

At its March 12, 2015 meeting the Stakeholder Relations and Access to Justice Committee received the CJSTF Report and Recommendations and authorized a 60-day public comment period.

Between March 12, 2015 and May 11, 2015 CJSTF sought public comment on the recommendations. This memorandum and its attachment discuss the current status of each of the recommendations, proposes implementation steps, and summarizes the public comments received.

BACKGROUND

After its creation in November 2014, the CJSTF developed an action plan that included a series of public meetings with presentations by experts to obtain input from key stakeholders, including those who have long struggled to address the justice gap, as well as others who might be able to suggest creative solutions. The task force was chaired by Luis Rodriguez (2013-14 State Bar President) and was comprised of

members of the State Bar Board of Trustees, Solo, Small Firm and Large Firm representatives, Public Sector representatives, Modest Means representatives, Bar Associations, Lawyer Referral and Information Services, Public Members, Academics and liaisons from the California Supreme Court and the California Commission on Access to Justice.

Seven all-day public hearings were held by the task force, from March through November 2014, to consider input and make recommendations to the Board of Trustees.

Chair Luis Rodriguez created three subcommittees of the task force to help guide the work of the full task force and with the hope that the task force could arrive at a consensus about how to improve access to justice and lay the groundwork for continued progress.

The three subcommittees were: (1) the “Now Group” which was tasked with a review of the current access environment in order to identify what approaches are working now and what may be scalable or replicated; (2) the “New Group” which focused on innovations that currently are being considered or implemented in other jurisdictions; and (3) a “Law School Debt Group” that examined the intersection of law school debt and access to justice.

The report submitted to the Stakeholder Relations and Access to Justice Committee included the following sections: an acknowledgement by Luis Rodriguez; a brief introduction of the problem the task force set out to address; lists of the topics and witnesses included in each hearing; a summary of key recommendations; excerpts from the testimony; and the individual reports from each of the Civil Justice Strategies Task Force’s subcommittees.

DISCUSSION OF PUBLIC COMMENT AND STATUS OF RECOMMENDATIONS

On March 12, the Stakeholder Relations and Access to Justice Committee of the State Bar Board of Trustees authorized a 60-day public comment period to solicit input from access to justice stakeholders, members and the public on the recommendations contained in the Civil Justice Strategies Task Force Report and Recommendations.

The 60-day public comment period would allow this proposal to return to the Stakeholders Committee and the Board for consideration of the comments at the July 2015 Board meeting.

As has been the case historically, in addition to supporting increased funding for legal services, the State Bar is working to find other ways to expand access to courts and lawyers for low and moderate income Californians. As noted above, the Task Force on Civil Justice Strategies, chaired by then State Bar President Luis Rodriguez was charged with analyzing the “justice gap.” The Task Force evaluated the role of the legal profession in addressing the crisis, sought input from groups working in this area,

studied creative solutions being considered in other states and countries, and developed recommendations to help fill the justice gap and achieve true “access to justice” in California. It was important to the CJSTF that the Board of Trustees solicit further input focusing on innovative strategies to address California’s “justice gap.”

Each of the 33 public comments received was reviewed and is summarized below organized by the corresponding CJSTF recommendation. The individual public comments are listed and described in further detail in Attachment A.

In addition to the public comments, the current status of each recommendation is described below along with implementation recommendations.

“Now Group” Recommendations

1. **Funding:** recommend that the State Bar boost promotion of the Justice Gap Fund in order to increase donations to the fund by lawyers and law firms.

The two comments submitted regarding the Justice Gap Fund wholeheartedly supported raising awareness about the Justice Gap Fund in order to increase donations and expressed appreciation for the State Bar’s continued support of the Justice Gap Fund.

Status:

In an effort to create additional funding for Legal Services programs, the State Bar facilitates a number of funding-related groups that engage in a range of activities to increase resources for legal aid. One of these efforts is the Campaign for Justice which includes the State Bar, Legal Aid Association of California, legal aid organizations, the Access Commission, several local bar associations, and leaders from the bench and bar. The Campaign includes a committee focused on increasing donations to the Justice Gap Fund and recently secured unprecedented support from the Episcopal Church of California. The Church has agreed to join the campaign and to promote the Justice Gap Fund to all of its congregations in California. In addition to faith-based outreach, the campaign is working with the Access Commission to increase contributions to the Justice Gap fund from attorneys and law firms.

The State Bar continues to seek contributions to the Justice Gap fund through the attorney dues bill and will continue to explore ways to encourage such donations.

Recommendation:

Refer to Office of Legal Services for implementation.

2. **Incubators/Modest Means:** recommend that the State Bar track the trajectory of incubator participants; and recommend that the State Bar help create a framework (e.g., mentors, toolkits, forms, etc.) to assist modest means practitioners.

Five comments received agreed that the incubator model serves as an example of how law schools and other stakeholders can help fill the justice gap for modest means litigants. One of the comments recommended that there be additional analysis of how these incubator programs can be replicated in rural areas where newer attorneys are less inclined to practice, and where the connection between the nearest law school and a rural community is generally more remote and suggested that incubator programs could focus on Alternative Dispute Resolution providing the opportunity to resolve matters outside formal court proceedings.

Status:

The Access Commission, together with the State Bar, secured foundation funding and selected four incubator projects to provide seed grants of \$45,000 each to jumpstart or expand incubator programs that teach new lawyers how to create sustainable practices that provide affordable legal services. We also produced and nationally distributed an Incubator Guide, a basic primer on incubators—the first of its kind.

The selection and funding of the new projects from a large and diverse applicant pool is resulting in new partnerships and collaborations between law schools, lawyer referral services, legal services organizations, law libraries, and others. The Commission’s work on this project has been featured in several publications, including the National Law Journal.

This year, working with a national expert, we are providing technical assistance to the incubator projects. As part of their grant agreements, the projects will be required to report common data to us for analysis, including information about the incubator participants. We are working with the projects to develop evaluation tools. We intend to document and share best practices learned through these projects.

Recommendation:

Refer to Office of Legal Services for implementation.

3. **Unbundling:** recommend that the State Bar do more to promote and incentivize limited scope representation.

Three comments recommended that the State Bar do more to promote and incentivize limited scope representation and recommended that judicial education should be a key component of promoting unbundled services.

Status:

For over a decade, the State Bar has promoted unbundling as one means of expanding the delivery of affordable legal services. The State Bar’s efforts have included working with state and national experts to draft materials, supporting changes in court rules and forms, and providing multiple MCLE trainings on the topic for attorneys throughout the state. The State Bar also has encouraged lawyer referral

services to develop panels of attorneys to provide unbundling services. The State Bar's recent educational efforts regarding unbundling include publication of guest editorials in the California Bar Journal from an attorney and a judge discussing the benefits of unbundling to the bench, bar, and public. We are also working with the Access Commission and leaders in the California Judges Association to help educate judges about the benefits of unbundling beyond the family law context.

Recommendation:

Refer to Office of Legal Services for implementation.

4. **Improved Coordination:** recommend greater coordination between the State Bar and Judicial Council, including in efforts to link the various stakeholders involved in providing affordable legal services.

One comment supported continued coordination between the State Bar and Judicial Council, and stated that they were aware that staff at both bodies, particularly those in the State Bar Office of Legal Services and the Judicial Council's Center for Families, Children & the Courts collaborate with each other frequently and strive to keep each other informed of statewide coordination opportunities.

Status:

As noted by one of the commenters, State Bar staff from the Office of Legal Services regularly communicate with Judicial Council staff from the Center for Families, Children & the Courts regarding a wide range of subjects and activities, including but not limited to legal services funding, self-help resources, training needs and opportunities, language access, and strategies and opportunities for expanding affordable and accessible legal services.

Additionally, on a quarterly basis, State Bar executive staff members meet with Supreme Court staff members to discuss current and planned programs, initiatives, and developments.

Recommendation:

Refer to Office of Legal Services for implementation.

5. **Civil Gideon:** recommend that the State Bar support efforts to secure universal representation starting with the following four areas: Land Lord / Tenant, Family, Domestic Violence, Immigration; and recommend that State Bar help to market what's working in the pilot projects, publicly support them, and help to scale them.

One comment expressed supports for efforts to try to close the justice gap through universal representation and concurred with the recommendation that the State Bar support the right to civil Gideon.

Status:

The Access Commission has long supported Civil Gideon and has worked on several projects to advance the civil right to counsel. The Commission supported the Sargent Shriver Civil Counsel Act (AB 590), which established and funded seven collaborative pilot projects between legal aid providers and courts to provide representation to low-income parties on critical legal issues that affect basic human needs such as housing, custody, conservatorship, and guardianship.

Access Commission members and State Bar staff have worked on the implementation committee for AB 590 and will participate in the evaluation of the pilot projects.

During the past year, the State Bar provided technical assistance to the Department of Social Services as it implemented a grant project to fund counsel for unaccompanied children facing deportation.

Recommendation:

Refer to Office of Legal Services for implementation.

“New Group” Recommendations

1. **Limited License Legal Technicians (LLLT):** The State Bar should study the design of a pilot program, in one subject matter area, and, with input from the Supreme Court, address how the governance, oversight, and “licensing” would be handled. It is important to allow the time for the Court to have input at the early stages, rather than after design is complete.

The LLLT recommendation garnered the most public comments by far. Of the 33 public comments received, 26 of them included comment on this recommendation. Sixteen of the commenters supported the recommendation; eight opposed it; and two were neutral (see Attachment B for specific commentary).

Status:

The State Bar has been considering LLLTs since its Limited License Working Group was created in March 2013 as a subcommittee of the Board Committee on Regulation, Admissions and Discipline Oversight (RAD). The charge of the working group was to explore, research and report back to the RAD Committee regarding the feasibility of developing and implementing standards for creating a limited license to practice law and/or the licensing of legal technicians, for those not fully admitted to the State Bar as attorneys.

In June 2013 the Limited License Working Group recommended further study of the limited license concept and the Board of Trustees passed resolutions approving the Limited License Working Group recommendations and proposed a further, expanded study of access to justice challenges in California, including but not limited

to the concept of limited license. The Civil Justice Strategies Task Force was created in response to this recommendation.

Recommendation:

Refer to Stakeholders and Access to Justice Committee for further study and exploration, including consultation with the Supreme Court.

2. **Alternative Business Structures (ABS):** The State Bar should monitor the ABS concept in other jurisdictions, with particular attention to the impact on pro bono and public impact litigation in jurisdictions that adopt these practices. Until this information is available to consider and understand, the Bar should not proceed with new rules or programs.

One comment was received urging the task force to recommend changes that allow outside investment for legal startups in California, noting the consumers already benefit from innovations such as unbundled legal services and online legal services, and that allowing outside investments for legal startups would provide California with an abundance of new entities addressing the access to justice gap.

Status:

As part of its efforts to anticipate and monitor important legal developments, at its last two annual retreats, the State Bar Board of Trustees sought and received information and updates from academics and practitioners regarding alternative business structures.

Recommendation:

Refer to the Office of Legal Services and Stakeholders and Access to Justice Committee for continued monitoring.

3. **Re-engineering:** The CJSTF recommends a pilot project, perhaps in landlord-tenant, using a joint working group of the bar, the courts, and perhaps relevant social scientists and tech people, to explore how the system could be redesigned to streamline the process, make it easier to use, and provide protection for the parties' rights.

One comment supported court re engineering to make electronic filing/delivery of court documents available to self represented litigants to allow court users of low or modest means to save the expense of the trip to the courthouse. Another comment urged that the legal services community be part of re-engineering discussions.

Status:

The Access Commission has long been a proponent of simplifying court processes to make them more accessible and user-friendly.

Recommendation:

Refer to Stakeholders and Access to Justice Committee for consultation with the Supreme Court and to Office of Legal Services for consultation with the Judicial Council.

4. **Navigators:** A program should be designed to be piloted in one or more self-help centers, to provide volunteer assistance to self-represented litigants in attending hearings. Permission should be requested to have the navigator sit at counsel table with the litigant, but not to address the court. Based on experience in other jurisdictions, the focus should be on this as a volunteer program, not as a for-profit method of assistance.

Six comments were submitted on the court navigators recommendation; four in support and two in opposition (see Attachment A for specific commentary).

Status:

California courts have experience using volunteers in courts, including through the Court Appointed Special Advocate (CASA) and Justice Corps programs.

Recommendation:

Refer to Stakeholders and Access to Justice Committee for consultation with the Supreme Court and to Office of Legal Services for consultation with the Judicial Council.

Law School Debt Recommendations

1. Info Clearinghouse: The Bar should serve as a clearinghouse of information on student debt management and repayment programs and key student loan debt and repayment information.
2. California Young Lawyers Association: Working through CYLA, the Bar should develop mechanisms and new approaches to assist young lawyers in better understanding and proactively addressing the implications of their student debt obligations.
3. Creating an Enhanced Understanding of Student Debt Data, Concerns and Implications: The Bar should continue to put a spotlight on the issue of law school debt, promote an enhanced understanding of the link between student debt and broader community access to justice and public safety concerns, and assist others working to study, quantify and better define the implications of student loan indebtedness.
4. Assess Relationship to Misconduct: The Bar should work through its discipline arm to assess whether student debt is precipitating or contributing to lawyer misconduct.

5. **Work with Law Schools:** The Bar should use both its law school regulatory power as well as its established relationships with law school leaders to encourage enhanced counseling, strategies and disclosures in regard to student debt.
6. **Participate in National Dialogue:** The State Bar should consider ways to add its voice to the national dialogue seeking to develop and promote enhanced loan forgiveness and repayment approaches.
7. **Encourage New Law School Cost Models:** The State Bar should help encourage new and innovative models that seek to address law school cost concerns.
8. **Implementation:** The Board of Trustees should create a group to implement these recommendations

Four comments expressed support for the law school debt recommendations. No comments were received in opposition to these recommendations. However, one commenter questioned the connection between law school debt and access to justice.

Status:

The CJSTF recommended that the Board of Trustees create a group to implement the law school debt recommendations.

Recommendation:

Determine whether to appoint a group to implement the law school debt recommendations.

ISSUE

Should the board accept the report prepared by the Civil Justice Strategies Task Force and adopt the implementation recommendations contained in this memorandum?

CONCLUSION

Yes.

FISCAL / PERSONNEL IMPACT:

To be determined based on internal programmatic requirements for implementation.

RULE AMENDMENTS:

Rule changes may be required if some recommendations are implemented, but at this time no changes are needed to the actual Rules of the State Bar.

BOARD BOOK IMPACT:

None.

RECOMMENDATION

It is recommended that the board accept the report prepared by the Civil Justice Strategies Task Force and adopt the implementation recommendations contained in this memorandum.

BOARD COMMITTEE RECOMMENDATION

The Stakeholders and Access to Justice Committee recommends that the Board of Trustees approve the following resolution:

RESOLVED, that following a period of public comment and consideration of public comment received and the Stakeholder Relations and Access to Justice Committee recommends that the Board of Trustees accept the report prepared by the Civil Justice Strategies Task Force and adopt the implementation recommendations contained in this memorandum.

ATTACHMENT

A: Public Comment Summary