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***265** RECOMMENDATION OF THE MINNESOTA LEGAL SERVICES PLANNING
COMMISSION ON
THE CONFIGURATION OF LSC-FUNDED PROGRAMS

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Minnesota Legal Services Planning Commission Drafting Committee [\[FN1\]](#)

I. Introduction

In the summer of 2003, the Minnesota Supreme Court convened the Legal Services Planning Commission. Chaired by Justice Sam Hanson and Judge Terri Stoneburner, the Commission was charged with, first, evaluating the present configuration of legal services programs receiving funding from the federal Legal Services Corporation (LSC); second, recommending a reconfiguration of those programs; and, third, engaging in statewide strategic planning of the delivery of civil legal services to the disadvantaged. The Commission finished its first two tasks at the end of 2003, and issued a report about the reconfiguration of the legal aid programs that received LSC funding. The first part of this report summarizes the work the Commission did in connection with those issues. [\[FN2\]](#)

***266** The remainder of this report details the results of a year of work done by the full Commission and its Committees. Across the course of that year, members of the Commission continued to meet and discuss how Minnesota's system of delivering civil legal services to the disadvantaged could be improved. As set out below, that "system" consists of a network of staffed legal aid programs, some receiving LSC funding and some not; a host of volunteer programs; and thousands of private attorneys contributing pro bono services. The Commission struggled with how to improve the communication and cooperation among all the contributors to this system and, at the same time, preserve the system's energy, creativity, flexibility, and capacity. With an eye firmly fixed on the maxim, "First, do no harm," the Commission adopted the recommendations contained in this report. [\[FN3\]](#)

II. Background

The Legal Services Planning Commission was certainly not the first group to examine the issue of statewide planning of civil legal services for the disadvantaged. Minnesota has a strong legacy of cooperation and communication among the different programs providing civil legal services to the disadvantaged, and the Commission was fortunate to inherit this legacy. [\[FN4\]](#) The genesis for the Supreme Court's creation of the Commission had more immediate national and local roots.

***267** A. National

In 1995, in anticipation of Congressional funding cuts to the Legal Services Corporation (LSC), LSC grantees in each state were asked to participate in the development of a plan for the design, configuration and operation of LSC-funded programs. Three years later, in 1998, LSC called upon its grantees to re-examine and reconfigure their state delivery plans to improve and expand legal services to eligible clients within the state. LSC required each of the fifty states to report back on their statewide planning process in several different areas:

- Intake and the Provision of Advice and Brief Services

- Effective Use of Technology
- Increased Access to Self-Help and Prevention Information
- Capacities for Training and Access to Information and Expert Assistance
- Engagement of Pro Bono Attorneys
- Development of Additional Resources
- Configuration of a Comprehensive, Integrated Statewide Delivery System

Minnesota was one of the last states to be asked to report on its configuration and planning, but eventually our turn came. In late 2002, the LSC formally notified the six LSC-funded programs in Minnesota of its concerns about the configuration of LSC recipient programs in Minnesota. The designated state planning body was asked to provide the LSC with a recommended configuration of LSC service areas by December 31, 2003. [\[FN5\]](#) While a state's recommendations for reconfiguration enjoy a ***268** presumption of validity, LSC standards make it clear that the final judgment on reconfiguration belongs to the LSC:

LSC values the judgments of designated state planning bodies that have addressed the question [of configuration] and will normally give great weight to those judgments that have been developed through an inclusive, thoughtful, and client-centered process. LSC will only adopt a different configuration based upon good and substantial reasons clearly articulated in writing and tied to the specific standards enumerated herein. [\[FN6\]](#) The LSC staff member charged with the responsibility of evaluating Minnesota's programs suggested the need for an "overarching vision or agenda that guides all planning taking place in the state" and "an ongoing broad-based entity or group with the 'big-picture' that ensures the participation of clients, staff, board members and other stakeholders in a fully integrated and coordinated planning process, including the planning processes." [\[FN7\]](#)

B. Minnesota

In 2004, there were six programs in Minnesota receiving funding from LSC:

- Anishinabe Legal Services [ALS]
- Central Minnesota Legal Services [CMLS]
- Judicare of Anoka County [JAC]
- ***269** • Legal Aid Service of Northeastern Minnesota [LASNEM]
- Legal Services of Northwest Minnesota [LSNM]
- Southern Minnesota Regional Legal Services [SMRLS]

The larger, comprehensive Minnesota delivery system also includes a "twinned" program, Mid-Minnesota Legal Assistance (MMLA) with a 20- county service area identical to LSC-funded CMLS. [\[FN8\]](#) MMLA also houses the statewide Minnesota Disability Law Center and the statewide Legal Services Advocacy Project. These seven programs comprise the Minnesota Legal Services Coalition (Coalition). In 2003, the six LSC-funded programs received \$3.8 million of LSC funding for direct delivery of civil legal services. [\[FN9\]](#) There are also at least twenty additional direct services providers that target special populations and/or particular geographic areas. With so many independent programs together providing comprehensive services, collaboration is the key to the effectiveness of the Minnesota civil legal services delivery system.

Minnesota has carried out state planning since 1981. Efforts at that time by the Coalition and the Minnesota State Bar Association (MSBA) led to creation of the MSBA Legal Assistance to the Disadvantaged (LAD) Committee, establishment of the Access to Justice Director position on the MSBA staff, ***270** creation of the Coalition State Support Center, creation in Minnesota of the first mandatory IOLTA program, enactment of a civil filing fee surcharge to support state funding for legal aid, and development and enhancement of volunteer attorney programs to serve all 87 counties.

The 1990's brought further advances. During that decade, LAD Committee/Coalition planning led to revision of Rule 6.1 [\[FN10\]](#); the country's first petition to the Supreme Court for required annual Pro Bono reporting (the petition was denied); creation of a statewide Loan Repayment Assistance Program; the statewide comprehensive Law School Public Service Program, unique in the nation [\[FN11\]](#); introduction of the MSBA's Bernard

P. Becker Awards for legal aid staff and volunteer law students; development of Law Firm and Government Model Pro Bono Policies; passage of an improved in forma pauperis statute [FN12]; and establishment of a pattern of expanded MSBA leadership involvement.

As a result of reductions in federal government funding, the 1995 session of the Minnesota Legislature requested that the Minnesota Supreme Court create a joint committee with the MSBA to prepare recommendations for state funding changes or alternatives to maintain an adequate level of funding for both staff and volunteer services to address the critical civil legal needs of low-income persons. In response, the Minnesota Supreme Court established the Joint Legal Services Access and Funding Committee, which issued its report on December 31, 1995. [FN13] That report led directly to an unprecedented initiative. With the *271 active support of the state bar association and the legal profession, Minnesota enacted the nation's first attorney registration fee increase earmarked for legal aid. Other important measures followed, including Coalition technology initiatives (a separate 10-year plan), increased legislative funding, enhanced collaboration and coordination of all civil legal aid providers, judicial district pro se and Pro Bono action plans, cy pres initiatives, creation of the Minnesota Legal Aid Foundation Fund, IOLTA interest rate initiatives, Minnesota's second Pro Bono reporting petition to the Court (denied), and more. [FN14]

*272 In short, the Minnesota justice system has been developing a comprehensive statewide plan for the delivery of legal services to the poor and disadvantaged for over 20 years. The Commission's decision regarding the optimal configuration for the LSC-funded programs was grounded in the larger context of the evolving state plan. Likewise, the Commission's recommendations for further development of statewide planning are made in the hope of building on the work already done.

III. The Minnesota Legal Services Planning Commission

A. Background

In July, 2003 the Chief Justice of the Minnesota Supreme Court, in cooperation with the MSBA and the Coalition, appointed the Minnesota Legal Services Planning Commission to serve as the Designated State Planning Body. Two co-chairs were appointed by the Chief Justice: Supreme Court Justice Sam Hanson and Court of Appeals Judge Terri Stoneburner. In addition, a Steering Committee was established to advise the Commission co-chairs on managing the Commission process and appointment of Commission members.

B. Commission Composition

The Commission is an inclusive, experienced group of stakeholders regarding the delivery of legal services to the poor and disadvantaged in Minnesota. The membership includes a full cross-section of the relevant constituencies and it serves as the *273 Designated State Planning Body for the purposes of LSC's Program Letter 02-02.

Stakeholder/Constituency of	Number	Percent
		Commis
sion		
Funders (including legislators)	10	22%
Judiciary	8	18%
LSC Providers (current & former staff, directors, boards)	14	31%
Other Providers (current & former staff, directors, boards)	15	33%

Business, education, government	10	22%
Client Community Groups/clients	7	16%
Bar Associations/Lawyers	35	78%
Gende		
Male	27	60%
Female	18	40%
Race/Ethnicity		
African American	3	7%
Asian	3	7%
Hispanic	2	4%
American Indian	2	4%
Caucasian	35	78%
Geography		
Twin Cities	25	55%
Suburbs	4	9%
Southern	3	7%
Northeast	5	11%
Northwest	3	7%
Central	3	11%

The Commission included 45 members. The Commission maintained a mailing list of an additional 43 persons. Over 25 *274 of the latter were regular observers to the process and many served on committees and contributed to the diversity of the Commission. From August 2003, through mid-November, 2003, the Commission focused its efforts on the question of reconfiguration of the programs receiving LSC funding. Committees met, worked with the Steering Committee to hire a consultant (LeAnna Hart Gipson), interviewed planning leaders and staff of reconfigured programs in other states, collected data regarding client needs, developed detailed information about the Coalition programs and how they deliver services (the first step of a broader review of all of the programs in the delivery system), discussed standards and options for configuration, and began an intensive examination of pro bono services in Minnesota.

C. Committee Structure

The full Commission met for the first time on July 28, 2003, and continued meeting about once a month. Its first major task was to form committees to carry on between full Commission meetings to collect necessary substantive information and to develop recommendations to take to the full body. The resulting five committees and their missions, for both reconfiguration and further statewide planning, were as follows: Programs and Delivery: Conduct an inventory of current programs; review current and

potential delivery models; and identify efficiencies and gaps in current systems. A long term mission of the committee was to design a "continuous improvement system" and address staff recruitment and retention.

Client Needs: Conduct an assessment of client needs, both "qualitative and possibly quantitative"; identify underserved populations and problems and barriers to access; consider means to address holistic needs of the clients. Long-term, this ***275** committee's mission was to explore different ways to evaluate outcomes and measures.

Best Practices: Research best practices and models from other states and services for centralized intake, resource development, and cost reductions; and identify resource materials to assist the Commission in its reconfiguration task, including collecting information about the problems and opportunities from those who had completed the process in other states.

Resources: Study and assess options for resource development; look at desirability of coordination and oversight of funding, fundraising and grant making; consider coordination of support and cost reductions and efficiencies. The long-term mission of this committee was to assess and improve public knowledge of legal services, and explore the most efficient allocation of resources.

Pro Bono: This committee was charged with exploring different means to enhance pro bono work. This included considering, in both long and short run, required reporting, mandatory Pro Bono, barriers to volunteers, new resources for volunteers, incentives for Pro Bono, and other innovative ideas.

IV. Consideration of Program Configuration

The LSC had given Minnesota a deadline of December 31, 2003, to complete its recommendation on LSC program configuration, and the Commission and its committees worked to meet that deadline. The Commission reviewed information collected by the Best Practices Committee concerning other states' experiences with reconfiguration. The Programs and Delivery Committee discussed a wide variety of possible configuration alternatives, ranging from no change at all to statewide twinning of programs. The committee stressed the need to remain open to reconfiguration, but, the committee could not ***276** conclude that there was a compelling reason at that time to reconfigure. The Client Needs Committee explored a variety of different methods for assessing needs and setting priorities and, especially relevant to the work on configuration, identified barriers to access that prevented clients from obtaining available legal resources. The Pro Bono Committee emphasized the need to enhance the work done by the private bar and make that work a full partner in the provision of civil legal services. The Commission was mindful of the need to avoid decisions on configuration that would adversely effect other non-LSC service providers. [\[FN15\]](#)

Judicare of Anoka County (JAC) served clients in a single county. Though the program had a long history of success, the LSC had made it clear that it would not continue to fund smaller single-county programs. In light of this LSC directive, the Commission discussed the best possible outcome for the clients in Anoka County and reluctantly determined that Anoka County should become a part of CMLS's service area for LSC funding purposes. CMLS will be able to best serve clients in Anoka County because of their close proximity, because services are already being provided to Anoka County by MMLA, CMLS's partner, with Title III (Senior Citizen) federal funds, and because Anoka County has been part of the Minneapolis United Way service area for many years. The Commission also concluded that the other four regional program service areas should remain otherwise unchanged. In particular, with respect to Anishinabe Legal Services (ALS), the Commission concluded that it would be best to keep ALS as a separate LSC-funded program. Commission ***277** members stressed the continuing importance of ALS, given the need for Indian people to keep control of priority setting and staffing to meet the unique concerns of on-reservation Indians.

Commission members, while acknowledging the need to continue to seek ways to improve the present system, indicated the desire not to harm a system that is functioning well. Many of the administrative efficiencies that might come from a centralized

administration have been and can be accomplished through the proven collaboration of the Coalition programs. The Commission concluded that consolidating LSC funding into one program at this time, perhaps to do statewide intake and advice/brief service, would not solve any of the major issues facing the Commission: coordination within the system, allocation of state and IOLTA dollars, and increasing salaries and benefits. Indeed, statewide consolidation might create additional concerns, including a potential loss of regional and local connections with clients, volunteers, and donors. Based on input from existing providers and discussions with providers in other states, the Commission was also concerned that creation of a single statewide administrative structure could result in increased competition for funding; blurring of the role of pro bono; duplication of the coordination between the LSC entity and the present Coalition programs; the loss of staff interaction when intake and advice services are separated from extended representation; and, most significantly, a huge diversion of resources at a time when the Coalition programs are already facing a cumulative reduction in funding by the end of 2004 of more than 30%.

The Commission concluded that the present delivery system works, that keeping the present system intact is the least disruptive and has the least cost, that the Coalition has already derived many benefits through collaboration and cooperation, that the four major regions match the state's view of itself, and that there was not sufficient information about client needs and how *278 configuration affects the ability to meet those needs to merit major change.

The Commission completed its 35-page report on reconfiguration and submitted it to the LSC on December 19, 2003. [\[FN16\]](#) The report detailed the comprehensive effort by the Commission to address all questions posed by the LSC staff in an informed manner. The final recommendation was that there should be four regional service areas in Minnesota, along with the independent Native American program (ALS). Each of the five service areas was identical to respective present service areas, with the exception of the Anoka County service area, which had been the sole single-county area. Anoka County would be combined with the CMLS service area for LSC funding. The Commission also expressed its commitment to continue a strategic planning process for further examination and improvement of the legal services delivery system within the state.

LSC accepted the Commission's recommendation in full by letter dated January 21, 2004. LSC's letter recognized the Commission's "meticulous consideration" of the issues, and "applaud[ed] the methodical and inclusive process employed . . . in designing a comprehensive and integrated delivery system . . . that takes into account the compelling needs of eligible clients." [\[FN17\]](#)

***279 V. The Statewide Planning Process**

Having completed its work on configuration of the LSC programs, the Commission turned its full attention to improvement of statewide planning of delivery of civil legal services to the disadvantaged. Some work on planning issues had already been accomplished. Based on a recommendation from the Resources Committee, in December 2003, the Commission adopted a 2004 state legislative funding recommendation urging an annualized increase of at least \$2 million. Recognizing the importance of Pro Bono efforts, the Commission also recommended that: (1) in the event the new legislative funding is obtained, LSAC allocate all of the 15% discretionary portion of new funds to meritorious applications directed to the delivery or support of pro bono services; and (2) in the event of an increase of the attorney registration fee, a minimum of one-third of the additional funds raised be allocated to programs for support and administration of pro bono services. [\[FN18\]](#)

The Commission also identified a need for more uniformity in the data submitted to various funders by the many legal services programs in Minnesota. The Commission concluded that uniformity would improve the funding process by enhancing the ability of funders to compare programs' efficiency and effectiveness. The Commission therefore recommended that LTAB and LSAC, the two largest state-level funders of civil legal services, adopt a uniform application form. Acting on this recommendation, and with

major assistance from the MSBA's LAD Committee and Commission members, LTAB and LSAC have already developed and adopted a form used during the 2004-2005 funding cycle. The new form will be evaluated and then revised as needed.

***280** Prior to the close of 2003, the Commission also adopted a number of principles to guide further efforts of the Commission and its successor. The most important include the principles that:

- Planning and allocating resources should flow from client need.
- Statewide equity in access to services is important.
- State planning must have broad participation and ownership and should focus on overall resources and programming issues.
- Pro Bono should be a full partner in the delivery of legal services. A significant expansion of Pro Bono participation is needed to meet the legal needs of low-income persons. This will require both a significant increase of funding for the initiation and expansion of new and existing programs, and a recommitment by Minnesota lawyers to satisfy their obligations under Rules of Professional Responsibility 6.1.

VI. The Need For Legal Services

Nationwide, there is a well-documented and longstanding unmet need of the disadvantaged for access to justice. The American Bar Association (ABA) has found that approximately half of all low and moderate-income households face at least one civil legal need each year. [\[FN19\]](#) The Association of American Law Schools, in its Equal Justice Project, has found the misdistribution of legal resources was harming what some estimate to be 45-75 million low and moderate income people who have legal problems in which interested and competent lawyers might be of benefit. [\[FN20\]](#)

***281** The Legal Services Corporation has recognized this longstanding problem and has stated:

Despite the success of LSC and its many contributions to equal justice in this country, the need for legal services is still overwhelming. More than 43 million Americans are potentially eligible for LSC-funded services. Yet because of insufficient resources, local legal services programs are forced to turn away the majority of low-income individuals who seek out their help. A benchmark legal needs study conducted in the mid-1990s by the American Bar Association concluded that 80 percent of eligible clients do not secure legal assistance when they are in serious situations in which a lawyer's advice and assistance could make a difference. Since the ABA study's release, more than 15 individual state legal needs studies have reached similar conclusions. LSC is committed to promoting a new vision of legal services that will reverse these statistics and dramatically increase the number of low-income Americans who can access the civil justice system through the provision of quality legal services. [\[FN21\]](#)

What is true across the nation is also true in Minnesota. In 1995, the Joint Legal Services Access and Funding Committee found that there was a "large and growing unmet need for civil legal assistance." [\[FN22\]](#) Sadly, in the intervening decade that need has continued to grow. While Minnesota's Coalition programs have worked diligently to provide service to thousands of clients each year, the Coalition programs can serve only between 2% and 19% ***282** of the estimated legal needs in their respective service areas. [\[FN23\]](#) The efforts of non-coalition programs and private pro bono programs help meet some of this need. Nevertheless, in Minnesota, as in the rest of America, a very large percentage, perhaps more than three-quarters, of the legal needs of the disadvantaged remain unaddressed.

The needs of clients must be paramount in the development and delivery of services to low income people. [\[FN24\]](#) Simply recognizing the existence of an aggregated, unmet need for legal services is of little value in determining how best to respond to those needs. Some states have gone to great length and expense to conduct surveys of the legal needs of the disadvantaged within their borders. The Client Needs Committee found that extensive, costly surveys in other states reached a consistent conclusion: that the level of serious need (meaning a client was unlikely to be able to solve the problem without legal help) was roughly twice the level of estimates drawn from an ABA survey

done over ten years ago.

Furthermore, while these surveys give important insight into the nature of client needs at a given moment in history, they may have a very limited utility across time. Client needs are varied and complex, and do not remain static. Given the consistent results of other states' surveys, which cost in excess of \$100,000 each, the Commission determined that it made more sense to apply the results of the other surveys to Minnesota's low-income population to determine the level of need in Minnesota, rather than ***283** do a Minnesota-specific survey. [FN25] In addition, rather than devoting substantial new resources to conducting such a survey here in Minnesota, it makes more sense to attempt to coordinate the existing collection of data about client needs. [FN26] As set forth in the Recommendations section below, Minnesota would be better served by having a single entity pool collected data and then analyze that information in the hope of identifying those client needs that are the most pressing.

Assessing the needs of clients is the first and most important step in allocating resources, and this assessment must be done in a way that can capture and address shifting or emerging needs. This assessment is, of course, only a first step. To make justice available to disadvantaged Minnesotans, Minnesota also needs:

- 1 Education so that persons know when legal services would help them;
- 2 Information about how to access legal services; and,
- 3 Services that are available and accessible.

Hand in hand with meeting the needs of clients is the commitment to assure that there is equal access for all, regardless of age, race, gender, sexual orientation, religion, language, disability, national origin, or place of residence.

***284** VII. Our Existing Resources

Against this backdrop of rising need, there has been a disheartening loss of resources. In the past decade, funding for legal services and pro bono services has decreased substantially. The current patchwork of funding for civil legal services is complex. Two of the primary sources of funds are (a) public funds, consisting of federal funds from the Legal Services Corporation ("LSC") and state-appropriated funds; and (b) what might be termed "quasi-public dollars" from attorney registration fees, interest on lawyers' trust accounts ("IOLTA" funds), and major foundation funding.

There has been a significant decline in revenues from the public and quasi-public funds since fiscal year 2002. By way of example, the overall decline in these funds between 2002 and anticipated revenues for 2005 will be 16% or approximately \$3.6 million dollars. IOLTA funding has decreased about 30% in each of the last two years. Foundation funding has also decreased substantially. Minnesota's overall share of LSC funding dropped about 17% after the 2000 census. [FN27] At the same time, program costs have risen dramatically.

At present, no single body collects information on overall funding for all legal service and pro bono service programs, so it is difficult to quantify the total decline in revenues available for these programs. In addition to public and quasi-public funding, these programs also engage in fundraising from private sources, and in particular, have raised substantial revenue from corporations, law firms, and the private bar. A review of the current public and quasi-public funding for the LSC programs gives a sense of the loss of resources for civil legal services for the disadvantaged:

***285** A. LSC Funding

LSC funding goes to Minnesota's six regional programs, SMRLS, CMLS, LSNM, LASNEM, ALS, and JAC (the "Regional Programs"). [FN28] LSC funding is allocated to each of these programs on a poverty population basis. Between 2002 and 2005, LSC dollars for Minnesota programs have declined by over \$640,000, or approximately 16%, including a decline from \$3.8 million in 2003 to an anticipated \$3.4 million in 2005. [FN29]

B. State Funding

State funding for legal aid began in 1982 and was a direct response to a 25% cut in LSC

funds at that time. Until the 2001 session, civil legal services had not had an increase in the funding base since 1997. Between 2002 and the present, the funding base has been reduced by over 8% or \$535,000 per year. The 2004-2005 appropriation was \$6,443,000. [\[FN30\]](#)

C. Attorney Registration Fees

Currently, \$50 of each Attorney Registration Fee is allocated to civil legal services (with certain limited exceptions). These funds totaled \$1,035,000 in FY 2005 ***286** and are allocated on the 85/15% formula applied to state funding. [\[FN31\]](#)

D. IOLTA

IOLTA funds have declined significantly from \$2,446,900 in FY2001 to \$1,209,100 in FY2005. These funds are allocated by the Lawyer Trust Account Board. ("LTAB")

E. Foundations and United Way

Foundations and United Way have provided additional funds to civil legal service programs, however support from these sources is also declining. Foundation funding to the Coalition programs in 2004 was \$1,291,231, a decline of over \$400,000 from 2003. Similarly, United Way Funding in 2004 was \$1,391,548 and is projected to decline by approximately 5% in 2005.

While client needs are growing and resources declining, the costs of providing services have increased significantly. The impact of inflation magnifies the significance of the funding dollars lost. For example, between 1998 and 2002, health care costs for the Minnesota legal aid programs increased 63%. The costs of interpretation and translation services for an increasingly diverse population have also risen dramatically. School debt loads for starting attorneys have increased dramatically and now may reach or exceed \$100,000. The starting salary for attorneys in the legal aid programs is approximately \$32,000, roughly 72% of the starting salary for a state public defender.

***287** The impact of the combined cuts and cost increases has been substantial on all civil legal services programs. For example, the seven Coalition programs have cut staff from 178 FTE attorneys in 2001 to 149 FTE attorneys in January 2004. While data is most readily available for Minnesota's LSC programs, other legal services programs have also lost resources. For example, state funding for Legal Assistance to Minnesota Prisoners (LAMP), which provided civil legal services to, incarcerated persons, ended in 2003.

IOLTA and foundation funding cuts also affected both non-coalition programs, such as the Volunteer Lawyers Network and the Minnesota Volunteer Attorney Program.

In light of dwindling resources, it is especially important to enhance the role of pro bono provision of civil legal services. The Pro Bono Committee and the Commission heard from Steve Scudder, Director of the American Bar Association's Pro Bono Center. In part, Mr. Scudder stated:

[I]t is important that pro bono be an equal partner with the legal services community: Pro bono connects LSC programs to the larger community. LSC programs can't provide all services needed; [we] need to bring all resources to bear; visible efforts by private attorneys on behalf of the poor promote the public image of everyone involved in serving the poor. Pro bono expands the range of services beyond those traditionally provided by LSC programs (e.g., business bankruptcy.); and broadens the universe of community leaders who support legal services which impacts decision making, for example at state legislatures. [\[FN32\]](#) ***288** In part because of the specter of diminishing resources, the Commission recommended pro bono become a full partner in the provision of civil legal services to the disadvantaged.

VIII. Commission Recommendations For Statewide Planning

A. Recommendations for the Creation of a Statewide Planning Body

In its May 31, 2004, Interim Report, the Minnesota Legal Services Planning Commission enumerated several tasks to be completed by December 31, 2004. The first of these

tasks was to:

Design a new, ongoing planning body, which will have broad participation, will focus on overall resources and planning issues, and will have sufficient time for appropriate decision-making. [\[FN33\]](#)

The Commission makes the following specific recommendations concerning the creation of this new planning body:

1. The Minnesota State Supreme Court Should Serve as the Sponsoring Entity For the Statewide Planning Body

The Commission recommends that the Minnesota State Supreme Court serve as the sponsoring entity for the new body. There are several reasons for this recommendation:

***289** • The Supreme Court has plenary responsibility for ensuring access to justice in Minnesota and the provision of legal services to the disadvantaged is an integral part of this mission. The court has had long experience working successfully with its essential partners in that mission: the broad range of programs providing legal services to the disadvantaged.

- Supreme Court sponsorship connotes broad, statewide concern for the issues that will confront the new planning body. Consequently, Supreme Court sponsorship will be of benefit to the new planning body in its work with, for example, the Minnesota state legislature and enhanced pro bono efforts.
- While not uninterested in the provision of legal services to the disadvantaged, the Supreme Court is a disinterested entity. Simply put, Supreme Court sponsorship carries with it an imprimatur of even-handed neutrality. This neutrality will be helpful to the work of the new planning body.
- It will be essential to have the Minnesota judiciary participate in the work of the new planning body. Having the Supreme Court serve as the sponsoring entity for the new body will help encourage that participation.
- The state court system has expertise and resources that would be valuable to the work of the new planning body. Having the Supreme Court serve as the sponsoring entity might make it easier for the new body to tap into these resources and expertise.

***290** 2. The Planning Body Should Focus Its Efforts 'On Three Sets of Tasks

While there are a variety of tasks that might be effectively undertaken by a statewide planning body, the Commission recommends that the new body focus its efforts on the following three sets of tasks:

- Gather and disseminate information. On a periodic basis, in conjunction with current LSC reporting requirements, the planning body should collate information on statewide needs and resources. To the extent possible, the planning body should:
 - Make use of existing collections of client needs data.
 - Use expertise from other agencies and entities (e.g. State Demographer's Office) to assess needs.
 - Work to improve collection of data that is done for other purposes (e.g. LSC or grant reporting) so that it is more useful for planning.
 - Disseminate information on available resources to funders.
- Advocate for increased funding and resources for provision of services, serving as a bully pulpit for the provision of legal services to the disadvantaged. To help accomplish this goal, the planning body should explore the possibility of:
 - Forming new partnerships to make use of existing expertise from other entities.
 - Finding new allies to support increased funding.
 - Finding new sources for funding.

***291** • Provide a forum for a discussion of Minnesota's existing system for providing these services and a forum for exploration of possibilities for revision of that system. The planning body should:

- Share information on "best practices" with respect to access to services, delivery of services, and program coordination. To help accomplish this, the planning body should also seek input from client communities.
- Review and discuss possible innovations (e.g. statewide single telephone number intake).

- Seek evaluation of providers to help ensure that the system is accountable to the client community. To accomplish this, the planning body should seek input from a wide range of sources, including those outside the provider and client community (e.g. private industry or management consultants).

Since one of the primary functions of the new planning body will be the gathering and assessing of information, the Commission makes a number of specific recommendations to the new planning body concerning the collection of information. [FN34] Generally, however, to the extent possible, the new planning body should make use of work already being done and information already being gathered, rather than increasing the existing administrative burdens already shouldered by service providers. In particular, LSC programs maintain a variety of data about the services they provide clients. While there is a great deal of program-based local collection of data, there needs to be a forum in which data is collected from different programs and then analyzed on a statewide or regional basis. The new planning body should make this a key goal. The Commission recognizes that *292 however valuable, this information will not necessarily be a complete, statistically valid overview of client needs in Minnesota. Instead, the Committee hopes to create a repository of information that will facilitate informed, if not scientific, decision-making.

3. The New Planning Body Should Have a Two-part Structure, So That It Can Be Both Broadly Representative and Appropriately "Nimble."

The composition of the new planning body must serve a variety of different goals, some of which seem in competition with each other. For example, the new planning body should be representative of a wide array of constituencies and yet, at the same time, the body should also be "nimble," able to respond quickly to new needs and new developments. On the one hand, it is important to have people serve on the new planning body who are knowledgeable about Minnesota's current programs providing legal services to the disadvantaged. On the other hand, it is also important that the new body be composed of members who are sufficiently disinterested so as to be able to engage in frank assessment of those current programs. Consequently, the Commission recommends a two-part structure for the new planning body.

i. Legal Services Planning Assembly

Once a year, the new planning body may convene a meeting with representatives from a broad set of constituencies. This larger group will not only review available information about client needs, but may also discuss and analyze issues of particular moment for the coming year. This larger group should include representatives of many different constituencies, such as:

- The judiciary
- Lawyers and staff currently providing representation
- *293 • LSC programs
- The new Pro Bono Council
- LTAB
- LSAC
- The LAD Committee
- MSBA
- Client representatives
- Non-lawyer community representatives from social service providers such as women's shelters, ethnic groups, and neighborhood groups
- Pro se projects
- Staffed non-coalition programs

There may well be other constituencies that need to be included. The Commission recommends that once the list of constituencies is identified, the supreme court solicit nominations for individual participants from those constituencies and make appropriate appointments for both the larger and smaller bodies.

ii. Legal Services Planning Committee

This larger body will help make the new body broadly representative, but it does not answer the need for nimble planning. To that end, the Commission recommends the

creation of a smaller steering committee that could meet two or three times a year, first to help frame the issues for discussion by the larger group and, subsequently, to assess the input from that discussion.

From twelve to twenty members would serve on this steering committee. Of those, perhaps half would come from designated constituencies. In particular, the Commission recommends including one member from each of the following:

- The judiciary
- The Legal Services Coalition
- ***294** • The new Pro Bono Council
- The MSBA's LAD committee
- Leadership of the MSBA
- A client constituency

This group could provide a firm knowledge base for the steering committee. The remaining members should be appointed with an eye toward achieving diversity, including geographic and racial diversity and diversity of insights. The hope would be to yield a steering committee that was both knowledgeable and disinterested. Members would be appointed to the steering committee for staggered terms of three years and could serve a second consecutive term.

4. New Resources Must Be Found to Help the Planning Body Accomplish Its Work. No matter how efficient, any attempt to collect and review information will require resources, and especially staff. The Commission recommends that new resources be found to help the planning body accomplish its work. For example, the state court system has staff adept at information-gathering and analysis and other state offices, such as the state demographer, may be able to lend assistance. The MSBA may be able to devote some staff time to this effort from the two staff positions that work on these and related issues. It might make sense to obtain LSAC/LTAB funding for some of this work on a periodic basis. The LSC might also have support available for data collection. Outside groups, such as a management consultant firm, might be persuaded to lend support on a volunteer basis.

B. Recommendations for the Court System

In addition to taking the necessary steps to create and inaugurate the new statewide planning body, the Commission recommends that the Minnesota Supreme Court and state court ***295** system do the following to help address the critical civil legal needs of low-income persons: [\[FN35\]](#)

1. Increase the Attorney Registration Fee The current attorney registration fee is \$218 (with some exceptions for attorneys in certain categories). Of that amount, \$50 is earmarked for civil legal services. The Commission recommends a \$75 increase in the general attorney registration fee, and a \$25 increase in the registration fee for new and low-income lawyers. This increase will raise approximately \$1.5 million of additional funding. A portion of the increase (one dollar of each fee) should be allocated to fund the implementation of the pro bono reporting system, discussed below. A minimum of one-third of the additional funds raised by increasing the registration fees should be allocated to programs for the support and administration of pro bono services, to enhance those services and assist in making pro bono a full partner in the delivery of legal services. Pro bono programs should be free to vie for a larger share of the funds raised by the increase of the registration fees. The remainder of the additional funds, like current funds raised through registration fees, should be distributed by LSAC on the 85/15% formula. The Commission recommends that broad bar support be obtained for this increase. To that end, an initial set of talking points regarding the proposal has been developed. The talking points include data regarding the benefit of civil legal services to the justice system and broader community, including the number of cases which are screened, settled, and/or otherwise managed more efficiently as a result of the involvement of legal services lawyers, as well as the role of legal services in helping prevent domestic violence, homelessness and other well-documented problems that carry very large human and financial costs. The talking points should also include data regarding benefits

associated with ***296** increasing funding for pro bono in terms of leveraging and increasing the services available to meet the critical legal needs of low income persons.

2. Implement Pro Bono Reporting

The Commission recommends that the Supreme Court require Minnesota attorneys to report pro bono hours and recommends that \$1 of a new registration fee be dedicated to covering the Court's costs of implementing that program.

C. Recommendations for the Private Bar

Without a lawyer, a Minnesota citizen may not have effective access to the justice system. For thousands of Minnesotans, however, the availability of a lawyer will depend entirely on whether a member of the private bar is willing to volunteer his or her time and talents on a pro bono basis. Minnesota lawyers have a long tradition of stepping forward to provide pro bono services to those who cannot afford to hire a lawyer. There are organized volunteer attorney programs covering every Minnesota County, and some of these have been in existence for almost forty years.

Minnesota lawyers will continue to support these programs, and, of course, will continue to contribute pro bono efforts on an individual, case-by- case basis. The Commission recognizes the value of this work and also recognizes that broad-based support of the private bar is essential to the success of the Commission's recommendations concerning the establishment of pro bono reporting and the increase of attorney registration fees. The Commission also recognizes that financial contributions from the bar have been an important source of funding for both legal service and volunteer pro bono programs. The Commission encourages the private bar to increase its financial support for these programs. In addition, the Commission recommends the private bar increase ***297** its support of the provision of civil legal services to the disadvantaged in the following ways:

1. Make Pro Bono a Full Partner In the Delivery Of Legal Services to the Disadvantaged
A significant expansion of pro bono participation is needed to meet the legal needs of the disadvantaged. This will require a recommitment by Minnesota lawyers to satisfy their obligations under Minn. R. Prof. Resp. 6.1. It will also require a significant increase of funding for the initiation and expansion of new and existing programs, and the Commission recommends that increase.

2. Promote Cooperation and Coordination of Pro Bono Efforts

The Commission recommends funding partnerships; relevant constituencies should work together to discourage unhealthy competition from funding sources and promote cooperation and creativity in seeking funding. The Commission recognizes and affirms the effectiveness of diverse programs and local programs, and recognizes and affirms the high level of commitment of volunteer attorneys. At the same time, the Commission encourages coordination of programs and delivery of services on a state-wide basis.

3. Create a Pro Bono Council to Help In This Work

The Commission supports the establishment of a Pro Bono Council to foster communication among all pro bono programs in the state.

***298** 4. Adequately Staff Pro Bono Development Efforts

The Commission recommends that the MSBA fully and adequately staff pro bono development efforts with at least one FTE professional (in addition to other access to justice staffing). [\[FN36\]](#)

5. Develop Some Statewide Delivery of Pro Bono

The Commission affirms the importance of local pro bono programs. At the same time, the Commission recommends the development of additional methods to deliver some pro bono services on a statewide basis, across provider lines, in coordination with local programs.

D. Recommendations for the Legal Services Programs

Minnesota's legal services programs have a national reputation for their organization, creativity, and effectiveness. In the course of its work across the last several months, the Commission has been repeatedly impressed by the extent to which Minnesota's Legal Service Coalition programs have worked to cooperate with each other and achieve

efficiency and cost-savings. This has been essential in an era of progressively leaner budgets. Some current examples of these efforts include:
Project Director and Staff Coordination. Coalition staff coordinate regular meetings of the program project directors. In addition, Coalition staff facilitates communication among legal services staff by maintaining email listservs and publication of a biweekly online newsletter. ***299** Training. The Coalition coordinates training for its staff attorneys, volunteer attorneys, paralegals, and support staff. Staff from non-Coalition programs also participate in Coalition-sponsored trainings. The Coalition provides training on 15 to 20 topics each year, focusing on both substantive law and professional skills development. Its efforts include a two and a half day legal services statewide conference every two years, bringing national and regional trainers to Minnesota.

Community Education. The Coalition publishes community legal education booklets on poverty law topics important to low-income Minnesotans. Booklets are written for low-literacy persons and include such topics as tenants' rights, public assistance programs, dissolution of marriage, child support, paternity, domestic abuse and seniors' rights. Some booklets are available in foreign languages. Booklets are distributed to Coalition and non-Coalition programs, public libraries and community agencies throughout the state.

Websites and Use of Technology. The Coalition has developed LawHelpMN.org for clients, and ProJusticeMN.org for staff and volunteers. The Coalition staff maintain up-to-date materials on the websites with help from other legal service providers. Coalition staff are also developing more resources for clients, and making those available statewide. For example, Coalition staff recently developed an online Order for Protection system using interactive software to create the documents needed to file for a court protective order. Persons needing protection from abuse, their advocates or attorneys can access the system via the internet, making services readily available to people in remote rural areas throughout the state. The Coalition is also partnering with the Fourth Judicial District Court (Hennepin County) to develop a similar interactive system (I-CAN!) including video technology, to enable a client to complete dissolution of marriage pleadings in his or her own language and produce an English version for filing.

***300** Legislative and Administrative Rule Making.

Growing out of a joint effort by the six Minnesota regional civil legal services programs, the Legal Services Advocacy Project (LSAP), a part of MMLA, was created over twenty years ago to represent the interests of low-income persons before legislative and administrative bodies. LSAP engages in legislative and administrative advocacy, conducts research and policy analysis, and provides training and education for, and on behalf of, low-income persons statewide.

The policy advocacy function, which is critical to protecting and furthering the interests of low-income persons in Minnesota, should be provided stable funding at a level sufficient to carry out its purpose. This function could be expanded to undertake systems change and policy advocacy in different substantive areas and to speak for a broader range of legal services providers. Participants in the discussion do not support a strict separation between policy and legal representation, because many good policy ideas come from those involved in direct client representation

The Commission recommends that the Coalition programs, perhaps in conjunction with other programs, consider the following proposals:

1. Explore Mechanisms For Lowering Health Care Costs.

Increases in these costs are the single largest recent cost increase (up nearly \$1,000,000 for the Coalition programs from 1998 to 2002). One possibility for containing costs is pooling health care coverage. In some states, legal aid has joined in the state health care program. For example, the Resource Committee was advised that in Kentucky, legal aid became a part of the Kentucky state retirement system which provided the programs with lower cost medical insurance and better long term retirement ***301** benefits.

Experiences in Maryland and Oklahoma should also be examined. A quick, informal survey in Minnesota suggested that at least some of the programs are paying amounts similar to what the state is currently paying for health insurance, so that the benefits of

joining a state program in Minnesota are not clear. Further study should be done. Further work should also be done in conjunction with the work the Council on Nonprofits is or will be doing on this issue.

2. Consider Other Possibilities For "Pooled" Support.

Careful consideration should be given to what other support services can be combined for greater cost savings. Examples include human resources processes, administrative services, grant-writing assistance, technology, training, case management, financial accounting and research.

3. Consider Coordination of Intake Programs.

The Commission recommends consideration of whether any intake systems can be consolidated or coordinated so as to avoid duplicate collection of the same demographic information from clients, to have a simplified entry point for clients, and to more quickly facilitate referrals to appropriate programs. It might be possible to improve referrals by creating an accessible list of all providers' service priorities and client eligibility criteria. Client tracking information could be coordinated to help make reasonable comparisons and compilations. Hotline programs and/or coordinated telephone services should also be considered. This could result in cases being handled more quickly and efficiently and could enhance the availability of services, particularly in non-metro areas.

E. Recommendations for the Legislature

Like public safety, health, shelter, and food, access to justice is a fundamental human need. The Commission is ***302** convinced that the bench and bar of Minnesota will work to improve the delivery of legal services to disadvantaged Minnesotans. At the same time, however, it is critical that this effort be adequately funded. The Commission now recommends that the Minnesota Legislature increase the funding for delivery of civil legal services to the disadvantaged:

1. The Surcharge on Real Estate Filing Fees Should Be Increased

The Commission recommends the legislature increase the funding for civil legal services, using an increase in the surcharge on real estate filing fees as a funding source. There is an important connection between legal services and a surcharge on the real estate filing fees, given that major areas of legal problems experienced by low-income persons include homelessness, substandard housing, and lack of affordable housing opportunities. The Legislature recognized this connection in 1992 and 1993 when the first surcharge on real estate filing fees was passed.

2. These Additional Funds Should Be Distributed According to the [Minn. Stat. § 480.242](#) Formula

The Commission further recommends that any increase obtained as a result of an increase in legislative funding continue to be allocated by reference to the 85/15% formula in [Minn. Stat. §480.242](#), and also recommends that, as to the 15% discretionary portion of any increased appropriation, LSAC allocate these new funds to meritorious applications directed to the delivery or support of pro bono services. Splitting increased funds on the 85/15% formula helps ensure that a significant portion of the money will be distributed on a statewide poverty-based basis.

***303** IX. Recommendations for the New Statewide Planning Body

Much of the work done by the Commission has been done by its committees. The Pro Bono Committee, for example, has already taken significant steps to establish a new Pro Bono Council. Two other committees have devoted a substantial amount of time to the examination of two issues that are critical to the provision of legal services to the disadvantaged. The Client Needs Committee has examined many different strategies for assessing the level of unmet client need. The Resources Committee has worked to answer the question that lies at the heart of effective provision of legal services to the disadvantaged: how additional can resources are developed to meet these legal needs. The Commission recommends that the new planning body make full use of the important work done by both of these committees.

A. Client Needs Committee

The Client Needs Committee gave detailed attention to different strategies for gathering information on unmet client needs. Out of that work, the Committee was able to develop a set of recommendations for the new statewide planning body.

1. Develop Simple, Consistent Guidelines For Collection of Relevant Data

Many legal services organizations already have a process in place to assess client need. Rather than dictate one method for assessing client need, the Commission recommends that the new statewide planning body develop a few, simple guidelines that encourage each organization seeking LSAC or LTAB funding to assess client needs and barriers, and to focus services on identified needs. The same information could be used by other funders and *304 to track trends or gaps in services. Such guidelines may encourage the organization to:

- Describe the process it followed to assess client need and barriers to service in the region it serves, and can describe how it implemented its assessment process.
- Document the actual involvement of clients and community groups in its needs assessment process, and that those clients and groups were representative of the region that it serves.
- Summarize the results of its process, including new or shifting needs, the barriers the clients identified in obtaining necessary services, and its plans to address the results.
- Demonstrate that it has consulted with other organizations providing service to low-income people in its region to coordinate service delivery, to clarify its role, and to minimize unnecessary duplication.
- Explain how the client needs information informs its allocation of staff and the type of assistance offered.

2. Periodically Review and Disseminate This Information

The Commission recommends that the statewide planning body periodically review the information reported by the service providers, summarize it, and distribute information about identified need, effective delivery methods and barriers to client service to: the legal service providers, funders, the Legislature, and others with an interest in assuring adequate legal services to low income people. For example, a cursory review of the LTAB and LSAC applications filed in 2004 revealed some recurring themes. Responses identified the challenges for pro se clients who need assistance with paperwork to participate in court proceedings, and the burden that places on court staff. Providing services to people who may not have transportation, the impact of charging a fee for service, the large unmet need for family law assistance, the specific needs of migrants and immigrants, and the associated cultural and *305 language barriers, the shortage of resources to assist children, and the barriers created by telephone intake were all identified in the applications. This is useful information that can inform the planning, development and funding of legal services.

3. Coordinate With Social Service Providers

The statewide planning body should maintain contact with social service providers. In a brief survey of community organizations, the Client Needs Committee not only received feedback on identified barriers, but received some very specific feedback about the drawbacks of a telephone intake system, and the lack of bilingual assistance to get simple information about driving directions, courtroom locations, requests for a continuance, and to complete government or court forms. In addition, the community organizations emphasized that co-locating legal services with social services helps overcome some of the barriers faced by low-income people. Many legal service providers are trying this approach with good results. Publicizing these ideas and successes may help legal service providers improve service, and give the funders some context for evaluating the applications they receive.

4. Promote Uniform Data Collection Whenever and Wherever Possible

During the course of the Commission's deliberations, and in response to the lack of consistent data about the clients currently served by legal service providers, a joint committee of LSAC and LTAB designed a joint application for their grant processes. As part of the redesign, applicants were asked to report certain demographic information

about the clients served by their programs. Having a uniform set of data will assure that the planning body can compare services delivered with the census data for the state to identify where groups of individuals may be proportionally underserved. The Commission recommends that the statewide planning body encourage the collection, analysis, and *306 distribution of this aggregate information to assure that services are equitably distributed among eligible clients.

5. Use Data Collected By Other Entities

In addition to the information collected by legal service providers about client needs, the Commission recommends that the statewide planning body serve as a "clearinghouse" to identify information already collected by other governmental and non-governmental entities that would complement and provide context for the client needs information collected by legal services providers. For example, there is a great deal of census data about low income people and where they live throughout the state that can be matched with the availability of lawyers in private practice, LSC-funded programs and pro bono programs. Also, organizations such as the Wilder Foundation collect information about homelessness that may reveal unmet need for service. The Center for Urban and Regional Affairs at the University of Minnesota studies relevant topics and publishes its results. Community organizations, including United Ways and CAP agencies, conduct needs assessments. Since the resources of the statewide planning body are likely to be limited, it would be important to identify existing information sources such as these, facilitate the spread of the information to the legal service providers, and summarize some of the trends for the funding decision makers.

6. Collect Information About Unmet Need

At several points in the Commission deliberations, the participants expressed an interest in collecting information about the number and type of requests for legal assistance that are turned down by legal service providers. It would be helpful to know the characteristics of the persons who are denied service, and the reasons for denial. The data is not consistently tracked by service providers. On the other hand, the Commission makes no specific *307 recommendation at this time as to exactly what data should be collected to identify high-priority unmet needs. Although some analysis could be made of the persons who call and are denied assistance, that analysis would not take into account the persons who do not seek assistance, or who are under the impression that there are no resources available to them. Also, it is important to separate those instances where the caller is provided with basic information, but no assistance, from those instances where no help is offered. The statewide planning body should continue to consider methods for measuring unmet needs and gaps in service.

7. Be Mindful of Barriers to Access

In the course of its deliberations the Client Needs Committee discussed the barriers that prevent or inhibit low-income people from receiving legal services. If client needs are going to set the direction for service delivery, these barriers must be considered to assure that low-income people recognize when they have a problem that could benefit from legal services, that they can contact an appropriate service provider and that they will receive timely information and assistance at the level necessary to address the problem presented. The statewide planning body should also take into account the barriers that low-income people may face, beyond the lack of financial resources, such as:

- remote location, isolation;
- lack of transportation;
- lack of telephone;
- illiteracy;
- mental/physical health/disability;
- homelessness/lack of stable housing;
- language barriers;
- cultural differences;
- housing and/or transportation controlled by employer;
- work hours;

- *308** • family problems, including caregiver responsibilities;
- lack of access to computers (none at home, no access to school or library, no training);
- lack of knowledge about available services;
- weather;
- fear of lawyers or the legal system.

Coupled with the barriers faced by individuals are the barriers associated with the legal service providers' limited resources. These include the limited hours that offices are open, the distance to services in rural areas, long waiting lists to get services, legal needs that fall outside the priorities of the provider, a conflict because the legal service provider represents another party to the controversy, and failure to meet the low income guidelines. A sampling of social service agencies interviewed by members of the Client Needs Committee affirmed the problems created by these barriers and the benefits of social service agencies and legal service providers working together to develop and maintain communication with clients, and to distribute educational materials. The statewide planning body may wish to encourage greater cooperation between legal service and social service organizations.

B. Resource Committee

In the course of its work, the Resource Committee discussed a wide variety of possible ways to increase resources for the provision of legal services to the disadvantaged, in addition to increases in state funding and in the attorney registration fee described above. The Commission recommends that the new statewide planning body consider the following strategies [\[FN37\]](#):

***309** 1. Pro Hac Vice Fees

An MSBA Multi-jurisdictional Practice ("MJP") task force is also looking at the process for admitting attorneys to practice on a pro hac vice basis. The Committee has been informed that currently the number of pro hac vice filings statewide is not tracked by the state court system. As a result, we do not have a current estimate of how much a fee would raise. MJP has discussed doing a survey of judges, but has not yet done so. Oregon, Mississippi and Texas have recently adopted pro hac vice fees where a substantial amount is directed toward legal aid programs. Estimates of revenues in those states range from \$65,000 to over \$200,000 annually. See, "Innovative Fundraising Ideas for Legal Services" - 2004 Edition, American Bar Association.

2. Further Development of the MN Legal Aid Foundation Fund at the Minnesota Community Foundation

Currently this fund has assets of over \$1 million and has contributed approximately \$100,000 to IOLTA for statewide distribution.

3. Cy Pres Fund Development

The Commission recommended that further work be done to educate judges and lawyers on directing cy pres funds to legal aid programs. There have been substantial successes in this regard. More work needs to be done on identifying class and collective action lawsuits and connecting the legal aid community with lawyers and judges handling those cases, including the Attorney ***310** General's office, the Minnesota Trial Lawyers Association and the Minnesota Defense Lawyers Association.

4. IOLTA Efforts to Increase Interest Rates and Decrease Fees

The Commission recommends that LTAB and MSBA continue to work to increase interest rates on IOLTA accounts (particularly banks with a significant number of accounts/deposit amounts).

5. Sliding Fees

The Commission recommends that this concept be explored further; particularly the possibility of providing services on a sliding fee basis to persons between 125% and 250% of poverty as a means of enhancing access and providing resources to serve eligible clients. The 1995 Penn-Stageberg Report recommended a \$10 administrative fee, subject to a hardship exception and recommended that programs report to LSAC with respect to their experiences with such fees. Since then, SMRLS and other programs have developed fee structures for limited programs. The experiences in those programs should

be assessed and considered for more widespread application. Issues to be considered include the income eligibility guidelines, the fee structure (whether flat or truly sliding), the amount of revenue raised, the costs of administering the fees, the impact on clients, including their access and use of services, and the impact on the nature of the services delivered.

6. Expanding Fundraising Beyond the Practicing Legal Community

There are several lesser-tapped resources. Fundraising campaigns focusing on corporate contributions and planned giving are examples of potential new areas of focus.

***311** 7. Legal Services Providers Partnering With Each Other and With Other Agencies Serving Similar Clients.

Such partnering opportunities should be analyzed in applying for government and foundation grants. Where another agency is the preferable applicant, legal aid may be an appropriate contractor for some of the funds.

8. Coordinated Fundraising

Consider regional and possibly statewide fundraising campaigns.

9. Recruit and Use Public Relations Resources

Recruit and use public relations resources (pro bono to the extent possible) to better educate the bar and the public about legal services including pro bono - with the goal of increasing pro bono support from the bar and financial support from the bar and the public.

10. Greater Staffing For Statewide Resource Development

Whether or not joint fundraising efforts are undertaken, additional staffing would help programs identify funding sources, apply for grants, conduct fundraising activities, and assist in some of the statewide education and coordination efforts, such as including the development of cy pres funding, large law firm recoveries, fundraising beyond the legal community, one time major gifts from law firms, and individual bequests to establish an endowment (possibly in connection with the Minnesota Foundation Fund). Such a position could be housed with the MSBA or in connection with the new statewide planning body.

***312** X. Conclusion

Access to justice is a fundamental need in a democracy. Access to justice is also a value that cuts across political lines. Here in Minnesota, we are all the beneficiaries of a long-standing tradition of working to make access to justice a reality for all Minnesotans. That work has been done, across time, by lawyers working in a wide variety of programs. In the course of its work, the Commission came to appreciate that many other states have not enjoyed the cooperation and communication that exists among the different programs that provide civil legal services to the disadvantaged here in Minnesota. The Commission expects that the creation of a new statewide planning body will improve the communication and coordination among the lawyers that do this important work. In the course of improving that communication and coordination, the Commission hopes that it will become possible to better meet our ultimate goal of serving client needs.

***313** APPENDIX B

Legal Services Planning Commission Members that served through 06/30/2004

Ms. Paula Erdmann
Mr. Kent A Gernander
Ms. Jean Hammink
Mr. Robert A. Howard
Ms. Jane Kretzmann
Ms. Danica Robson
Dr. Lenee Ross

Members that served through 12/31/2004

Ms. Judy Anderson
Mr. James L. Baillie
Mr. Charles B. Bateman

Mr. Bruce A. Beneke
Mr. Robert O. Blatti, Jr
Mr. William M. Burns
Ms. Karen J. Canon
Mr. Richard J. Cohen
Mr. Joseph T. Dixon, Jr
Mr. Keith M. Ellison
Ms. Anita P. Fineday
Honorable Luz M. Frias
Ms .Beverly Jones Heydinger
Mr. Thomas E. Holloran
Mr. Peter B. Knapp
Mr. David L. Knutson
Mr. Charles A. Krekelberg
Ms. Jean A. Lastine
Mr. Bricker L. Lavik
Ms. Susan T. Ledray
Mr. Douglas B. Meslow
***314** Mr. Thomas C. Mielenhausen
Ms. Mee Moua
Honorable Paul A. Nelson
Mr. Terrance C. S. Newby
Ms. Julianne Nilsson
Mr. Floyd A. Pnewski, III
Mr. Steven L. Reyelts
Honorable Salvador M Rosas
Ms. Andrea F. Rubenstein
Ms. Mary D. Schneider
Ms. Sally A. Scoggin
Ms. Renee Tomatz
Yorn Yan
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[\[FN1\]](#). The members of the Minnesota Legal Services Planning Commission Drafting Committee are as follows: Prof. Peter Knapp, William Mitchell, Hon. Beverly Jones Heydinger, Office of Administrative Hearings, Bricker L. Lavik, Dorsey & Whitney, Sally A. Scoggin, Briggs and Morgan, and Jeremy Lane, Mid-Minnesota Legal Assistance. listed at the end of this article. Professor Peter B. Knapp served as the chair and the reporter of the drafting committee. The entire Legal Services Planning Commission membership list can be found as Appendix B to this article.

[\[FN2\]](#). Recommendation of the Legal Services Planning Comm'n of the Configuration of LSC-Funded Programs, December 19, 2003. The full report of the Commission to the LSC is available at <http://www2.mnbar.org/committees/legal-services-planning/finalreport.pdf> (last visited April 27, 2005).

[\[FN3\]](#). The Commission issued an interim report at the end of May, 2004. The Minnesota Legal Services Planning Commission Interim Report, May 31, 2004 is available at <http://www2.mnbar.org/committees/legal-services-planning/InterimReport.pdf> (last visited April 27, 2005).

[\[FN4\]](#). Joint Legal Services Access and Funding Comm. Final Report ("the Penn-Stageberg Report"), December 31, 1995. The report can be found at <http://www2.mnbar.org/committees/legal-services-planning/StagebergPenn1995Report.pdf> (last visited April 27, 2005)

[FN5]. December 3, 2002 letter from Melissa A. Pershing, LSC Program Counsel. A copy of the letter is available at <http://www2.mnbar.org/committees/lad/configuration-concerns.pdf> (last visited April 27, 2005).

[FN6]. LSC Program Letter 02-03.

[FN7]. Letter of Melissa Pershing, February 11, 2003. A copy of the letter is available at <http://www2.mnbar.org/committees/lad/plan-to-plan.pdf> (last visited April 27, 2005).

[FN8]. Federal LSC funding carries with it certain restrictions on the type of legal work that may be done. LSC dollars, for example, cannot be used for the litigation of class actions. "Twinning" refers to the creation of a separate program, identical in service area to an LSC-funded program, which itself receives no LSC dollars. This "twinned" program is free to undertake work that would otherwise be precluded due to LSC funding restrictions. MMLA relies on funding from sources other than the LSC, such as state legislative funding, to carry out its work.

[FN9]. This figure includes special Native American funding to ALS and migrant funding to SMRLS. The programs received over \$8.9 million in other funds for a total of close to \$12.7 million for direct delivery of services.

[FN10]. Minn. R. Prof. Resp. 6.1 provides in part that, "A lawyer should aspire to render at least 50 hours of pro bono publico service per year",

[FN11]. During the 1990's, Minnesota's three law schools worked together with the Minnesota Justice Foundation (MJF) and legal service providers to create a single, cooperative volunteer program for law students. Today, MJF administers the law-related public service programs at William Mitchell, the University of Minnesota, Hamline, and St. Thomas.

[FN12]. See [Minn. Stat. § 563.01](#) et seq.

[FN13]. Penn-Stageberg Report, supra note 4 at 6.

[FN14]. These efforts did not go unnoticed. In July, 1999 an LSC consultant spent a week in Minnesota reviewing its planning processes, goals and achievements. Following submission of the report, Minnesota received LSC's official response on December 9, 1999. That response was highly complimentary. Excerpts follow:

We ... applaud the collaborative relationship between the Coalition programs and the Minnesota State Bar Association. The goodwill and good work that has resulted has done much to expand resources for Minnesota's low-income clients. Minnesota's programs have been working and planning together in coalition, and with the State Bar Legal Assistance to the Disadvantaged Committee, for 17 years. This continuous planning process has lead to many impressive collaborative and coordinated efforts.

Minnesota programs have demonstrated a willingness to be flexible, consider needs other than their own and respect each others' abilities. The programs do not appear to be constrained by 'turf' concerns and seem willing to continue to make decisions focused on what is best for clients, not what is best for individual programs. We applaud this approach.

Following a similar review in 2002 of Minnesota's planning and collaboration efforts, LSC was again complimentary:

Minnesota has shown national leadership in a significant number of the initiatives it has undertaken.... Minnesota's justice community should be proud of its history, all the progress made in the last several years, and, of course, of the excellent client representation that continues despite the ongoing challenges.

[FN15]. A more complete account of the committee work is set forth in the Recommendation of the Legal Services Planning Commission of the Configuration of LSC-Funded Programs, December 19, 2003. The full text of that report is available at <http://www2.mnbar.org/committees/legal-services-planning/finalreport.pdf> (last visited April 27, 2005).

[FN16]. Recommendation of the Legal Services Planning Comm'n of the Configuration of LSC-Funded Programs, *supra* note 15.

[FN17]. Letter from LSC dated January 21, 2004 available at <http://www2.mnbar.org/committees/legal-services-planning/LSC01-04reconfig-ltr.pdf> (last visited April 27, 2005). The new configuration was published in the Federal Register in April, 2004. The change means that for LSC funding, Anoka County will be added to the current CMLS service area in 2005. JAC will continue to operate as a non-LSC program.

[FN18]. For further discussion of these recommendations, see *infra* notes 20 and 23.

[FN19]. Agenda for Access: The American People and Civil Justice, ABA, 1996.

[FN20]. Am. Assoc. of Law Sch. Equal Justice Project Report, Pursuing Equal Justice: Law Schools and the Provision of Legal Services, March, 2002. The full text of the final report is available at http://www.aals.org/equaljustice/final_report.pdf (last visited April 27, 2005).

[FN21]. Legal Services Corp., 2000-2001 Annual Report.

[FN22]. Penn-Stageberg Report, *supra* note 6 at 6.

[FN23]. Minnesota Legal Services Planning Commission's Program Delivery Committee, Program Delivery Report, November 6, 2003.

[FN24]. The term "client," as it is used throughout this report, is intended to be inclusive of all potential prospective low-income individuals and entities in need of free or substantially reduced fee legal services, whether delivered through staff, volunteer, Judicare or other programs. The term includes individuals who may not have previously established an attorney-client relationship with any of Minnesota's existing legal service or pro bono service providers.

[FN25]. The Massachusetts study was recommended by the committee as a good model to follow. That study, if extrapolated to Minnesota, indicates that tens of thousands of critical civil legal problems of low-income persons are not being handled each year because of lack of funds. Given the decline in several funding sources in recent years, and the significant increases in the costs of delivering services, the committee concluded, and the Commission agreed, that the immediate need for increased funding is overwhelmingly clear. The study is available at http://www.mlac.org/legal_needs_survey (last visited April 27, 2005).

[FN26]. For example, as set forth above, Commission members worked with LSAC and LTAB to develop the new unified grant application.

[FN27]. The percentage decline for particular LSC programs varied from roughly 30% for Northwest Minnesota to less than 17% for other programs.

[FN28]. In the future, JAC will not be separately funded by LSC. LSC dollars which formerly funded JAC will go instead to CMLS.

[FN29]. In 2004 the buying power of every LSC dollar appropriated is only 43% of what it was in 1980; the dollars themselves are now only 11.5% more than they were in 1980 and some years have been lower than the 1980 appropriation.

[FN30]. By statute, state funding is allocated on an 85/15% formula with 85% of the state funds being allocated on the same geographic/poverty population formula as the federal LSC money to the Regional Programs, except that funds are not allocated to CMLS, but instead to MMLA. The remaining 15% (in FY2005 \$966,450) is distributed by the Legal Services Advisory Committee ("LSAC"), based upon a grant application process.

[FN31]. The 15% (in FY2005 \$155,250) is also distributed by LSAC, based upon the grant application process.

[FN32]. Legal Services Planning Commission, MSBA Legal Assistance to the Disadvantaged Committee, Meeting Notes, February 26, 2004. The complete summary of Scudder's testimony is attached to the Pro Bono Committee's Final Report at Appendix F. This report is available through the MSBA.

[FN33]. See Minnesota Legal Services Planning Comm'n Interim Report, supra note 3 at 11. This report can be found at <http://www2.mnbar.org/committees/legal-services-planning/InterimReport.pdf> (last visited April 27, 2005).

[FN34]. See section IX, infra of this paper for the recommendations.

[FN35]. Justice Hanson abstained from voting on these recommendations.

[FN36]. This recommendation has already been implemented with the addition of the Pro Bono Development Director position to the MSBA staff.

[FN37]. The Commission also recommends as a reference source a recent ABA publication entitled "Innovative Fundraising Ideas for Legal Services - 2004 Edition," which contains a collection of descriptions of fundraising efforts in other states, including bar dues add-on and opt-out programs. Available at <http://www.abanet.org/legalservices/downloads/sclaid/innovatefund2004.pdf> (last visited April 28, 2005).

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