



EQUAL ACCESS TO JUSTICE

For low-income people facing eviction, domestic violence proceedings, or administrative matters, the high cost of a lawyer becomes an enormous hurdle in their quests for justice. The problem of indigent people being locked out of the justice system has become such a concern that NFPA created a committee to study access to justice at its last annual meeting in October. At the same time, the Massachusetts Access to Justice Commission released a 47-page report to the Supreme Judicial Court suggesting, among other things, a controversial idea: allow non-lawyer advocates to represent indigent people in some proceedings.

On its surface, the proposal makes sense. Currently, not enough lawyers are available to assist the poor with their legal troubles, and many legal-services offices are stretched to the attorneys' limits providing services. Quite simply, there just are not enough lawyers to go around. "It would seem that the availability of the supportive views of a paralegal would tend to produce a more-informed decision maker and likely a fairer result, particularly when the opponent... is represented by counsel... The Commission urges that the Supreme Judicial

Court authorize trained non-lawyers to act in court on behalf of people of low income in designated circumstances," the report said. Yet the Massachusetts Bar greeted the proposal of non-lawyer advocates with skepticism.

Standards to Follow

The Boston Bar Association President, Anthony M. Doniger, did not dismiss the proposal entirely, but in the October 29, 2007 edition of *Massachusetts Lawyers Weekly*, he was quoted as saying, "The fundamental issue is that one of the great virtues of having lawyers do things is that lawyers are a regulated profession and there are standards they have to follow." Doniger did not respond by press time to inquiry.

Doniger's thoughts were echoed by Marshfield attorney Jon S. Davis, co-chair of the Real Estate Bar Association's Committee on the Unauthorized Practice of Law, in the same article. Davis said, "Consumers deserve the same representation... [that trained lawyers can provide], and just because they're poor they should not be denied that." He continued that practicing law is

not easy, and that the ordinary consumer may not understand the nuances of the law.

Yet, according to the Commission's report, non-lawyer advocates already give advice to low-income clients, but they are not permitted to speak on behalf of them. "In terms of assisting low-income people obtain a fair hearing... the system's refusal to permit well-trained lay people (perhaps certified by the court) to speak on behalf of a client in the courtroom may represent a true barrier to access to justice," the Commission's report said.

Cheryl Lawrence, Tenant Organizer, City Life/Vida/Urbana in Boston, certainly agrees that clients need advocates on their behalf. "Most tenants go to court unrepresented. While the housing courts claim to be more relaxed, it's still very difficult to go up against a lawyer representing the other side. Tenants are rarely treated justly," she said. Lawrence finds herself in court twice per month, but prefers to negotiate with landlords outside of court to preserve the rights of tenants.

No Legal Assistance

"The alternative now is that the client has no legal assistance at all," said Susan O'Connor, a paralegal at Western Massachusetts Legal Services in Springfield, Massachusetts. She takes on between 60 and 70 new cases per year, and her unit, representing Hampden County low-income clients, turns away as many as 20 cases per month, simply because they do not have the staff to handle the influx. While expanding the role of non-lawyer advocates may not allow them to take more cases, the addition of more advocates would, she said.

Kelly J. Cobb-Lemire, Pro Bono Director for the Massachusetts Paralegal Association, commends the Commission for recommending non-lawyer advocates as a viable alternative for low-income clients.

"As a legal specialist with more than 25 years experience, I believe that there are many well-trained and experienced non-lawyers who are more than capable of providing legal expertise in various types of court proceedings," Cobb-Lemire said. "Allowing trained and experienced lay advocates to act in court and participate in front of judges will make competent legal assistance readily available to more people of low-income."

Naturally, non-lawyer advocates would need some form of regulation, all three agree. Lawrence said, "I would hope it would begin with an intensive 6-month course, or something like that, [f]ollowed by a test of some sort."

While the addition of non-lawyer advocates to the justice system would not necessarily require paralegal regulation, Cobb-Lemire said, "This may encourage more paralegals to become 'registered' or 'certified.' In addition, there would be a need for continuing legal education through local bar associations and paralegal organization."

O'Connor agrees that certain standards would need to be upheld in order for any program with non-lawyer advocates to be successful. "Any program involving non-attorneys should be regulated and limited to those with adequate and standardized training, a certain

amount of formal education, and some experience working in the legal system," she said.

The Bar apparently would endorse a non-lawyer advocate program only as a last resort, however. In the November 5, 2007 issue of *Massachusetts Lawyers Weekly*, the newspaper published an editorial that suggested other recommendations in the Commission's report, such as easy-to-read forms for pro se litigants and better funding for legal aid services, before stooping to non-lawyer advocates.

"Allowing lay advocates in the courtroom would create a second, lower tier of justice," the editorial concluded.

Perhaps a question of territory raises the Bar's hackles, but Lawrence doesn't believe lay advocates would provide lower-quality legal services. "A lousy lawyer gives lower-quality legal services. I can give you a list of lousy lawyers. ... I'm not a paralegal, but I'm a ... good advocate. Tenants need good representation. Housing court is a two-tier system now," she said.

Experienced Paralegals Could Help

O'Connor said, "I see too many poor people lose important rights because they can't navigate the legal system alone and can't afford representation." She believes that trained and regulated non-lawyers could most certainly provide limited representation in some court proceedings.

"[I]f lawyers are unable or unwilling to increase their pro bono hours ..., [then] the courts have no choice but to solicit the help of trained and experienced lay advocates. ... There are many experienced paralegals who would welcome the opportunity to participate in court proceedings but are prohibited due to the current definition of the unauthorized practice of law," Cobb-Lemire said. "[T]here is a place in the court system for trained and experience[d] non-lawyers who would actually be more passionate about helping people than any experienced attorney."

It is a win-win situation not only for paralegals but for the public, Cobb-Lemire said.

Despite the Bar's reluctance, the sheer necessity of non-lawyer advocates may trump any turf, ethical, or other concerns held by Bar members and require the SJC to loosen the rules regarding the unauthorized practice of law. As O'Connor said, this may not be an ideal solution, and it would require careful regulation, but too many people are losing their rights due to their inability to afford counsel. In the long run, it may be the injection the court system needs in order to revitalize the meaning of justice to low-income people.

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