

## MINUTES

### ACCESS RESEARCH COMMITTEE

#### CITIZENS COMMISSION FOR THE STATE COURTS

November 14, 2005

Committee Chair Ralph Littlefield called the meeting to order. Present were Ralph, Alan Cantor, Al Leahy, Cheryl Killam, Ginny Martin, and Ken Barnes.

We discussed the various access issues that the Research Committee would be addressing. These can be summarized as follows:

1. Are all court buildings accessible to people with disabilities?
2. Are legal costs creating barriers to public access to the courts?
3. Are legal procedures themselves a barrier to public access?
4. Is technology being used to improve public access?
5. Are language and communication systems utilized by the courts also creating barriers to public access?

Regarding question no. 1, Cheryl said that she has data on the accessibility of all court buildings in New Hampshire. She talked about how the Hampton District Court had relocated after the Lane decision of the Supreme Court. That leaves only the Berlin District Court as the only court in New Hampshire with no accessibility to people with disabilities. The question now has become program access: whether there is large print for people with visual impairments, accommodations for people with hearing impairments, etc.

As for no. 2, the legal costs are a huge barrier to access to the public justice system. This problem is frequently mentioned, not only in New Hampshire but nationwide. The committee agreed that we need to gather more data on this issue, and Ralph (I think) said that he would talk

to Laura Kiernan about getting access to the data. Ginny Martin also said she would provide a study by the federal Legal Services Corporation (LSC) which contains a lot of useful information.

We talked about how, in order for people to be eligible for free legal assistance through NHLA and pro bono, the income requirements are so low that many people are left ineligible for free legal services and also totally unable to afford market rate legal services. One partial solution for this problem would be to provide “unbundled” legal services. This means that lawyers would represent people only to the extent of performing specific discrete tasks, rather than fully representing them through the entire litigation. The New Hampshire Supreme Court is currently considering a set of proposed rules propounded by the Court’s Rules Committee. Ken volunteered to send those rules to committee members.

We also discussed how all the information about free and reduced-rate legal services gets communicated to the public. There should be postings at courthouses and at the DRC, on the various websites, including the court’s self-help site. And the clerks of court need more training so they can answer people’s questions regarding access to legal services. Then, of course, there is the difficult question of how to give full access to the legal system to people who, after trying to gain access to the above legal services, still wind up with no legal representation and appear in court pro se.

Al Leahy pointed out that, about 15 years ago, there were a number of proposals for some kind of legal insurance to be provided. This would be analogous to health insurance, where, for the payment of a single premium, one could have legal representation available to handle various (non-major) legal problems. Unfortunately, most of these legal insurance programs were

available through labor unions, and union membership has declined substantially, leaving legal insurance a solution without a constituency.

Ken described briefly another proposal that had been presented at a Bar Association leadership retreat in September, whereby, instead of exclusively hiring lawyers, people could use more paralegals and other licensed legal assistants to help them with some portions of their legal problems at a lower price. This “solution” may not actually be feasible for a number of reasons, but it is worth keeping in the backs of our minds as we try to brainstorm about how to solve these difficult problems.

Alternative dispute resolution was also discussed. That is, rather than litigating a case through the trial system, maybe more use should be given to the parties negotiating a resolution that results in a win-win situation for everyone involved. A mediator would facilitate such negotiations, but would not have the authority to impose any particular resolution upon the parties. Under Superior Court Rule 170, mediation is required at some point during civil cases. Committee members wondered whether perhaps such mediation services should not be free of charge to everyone, but rather should be available only for a fee if the litigants can afford to pay. The money that the courts take in from such fees could be put into a fund for provision of other legal services to other indigent people.

The final access issue proposed to us by the steering committee was technology. We had a brief discussion about that but quickly turned to a fifth issue that we wanted to add to the list. Language barriers and other similar communication barriers stand in the way of many people’s gaining access to the justice system. Especially with an immigrant/refugee population that has been placed in New Hampshire, non-English speaking people and limited-English proficiency (LEP) people are finding themselves more and more often unable to participate fully in court

proceedings. Likewise for deaf people who require sign language in order to communicate. The New Hampshire court system has not made itself fully accessible through interpretation services to such people.

The committee adjourned, setting its next meeting for April 29<sup>th</sup> at 2:00.