



ARKANSAS
ACCESS TO
JUSTICE
REPRESENTING HOPE

Commission Meeting Arkansas Bar Center, 2224 Cottondale Lane, Little Rock, AR 72202

January 20, 2012
12:00pm – 3:00pm

Commissioners Present

Rose Adams
Jean Carter
Nate Coulter
Professor Kelly Olson

Lee Richardson
Judge Jim Spears, *Vice Chair*
Justice Annabelle Imber Tuck, *Chair*
Danyelle Walker

Staff Present

Amy Johnson, Vince Morris, Kim Marshall, Phillip Garcia, Erin Jacobson

Guests

Stewart Whaley, Elizabeth Armstrong, Ashton Yancey

Welcome & Introductions

Justice Tuck called the meeting to order at 12:11 p.m. She began by identifying several guests present, including Stewart Whaley, a key developer of the iProBono application. Justice Tuck advised that Mr. Whaley would be giving a presentation and demonstration on the new application. She continued by introducing Ashton Yancey, an intern with the Arkansas Judges & Lawyers Assistance Program, and Phillip Garcia, an AmeriCorps member who works with Access to Justice on outreach coordination related to social justice issues. Justice Tuck and Professor Kelly Olson then introduced Elizabeth Armstrong, a law school extern who recently began assisting the Commission and Arkansas IOLTA on evaluating potential policy changes and creating related proposals to these changes. Finally, Justice Tuck asked that everyone remaining introduce themselves for those new to the Commission.

Before moving forward, Justice Tuck advised due to missing members that a quorum of voting members was not met, and thus proposed meeting as a committee of the whole. The present group would need to act as a committee of the whole in order to make recommendations which could then be sent for votes made by the entire Commission via email. Justice Tuck requested that the motion be made to act as committee of the whole; Ms. Walker so moved in favor of the motion and Mr. Coulter seconded the motion. The group unanimously voted in favor of the motion and Justice Tuck advised that with the motion passing that the group would act in the manner as a committee of the whole.

New Business

Approval of Minutes from October 15, 2011

Due to the absence of a quorum the October meeting minutes could not be approved. The group moved onto new business and committee reports.

Committee Reports

Education Committee

Before giving her report, Justice Tuck and Mr. Coulter clarified his committee positions. Mr. Coulter advised that he would like to stay with Resource Development Committee as Chair and would work with the Education Committee if necessary. Justice Tuck relieved Mr. Coulter of the Education Committee, thanking him for his assistance with connecting the committee with a key contact to Justice John Paul Stevens, Joan Baker.

Justice Tuck stated that much progress has been made in planning the spring conference since the last meeting, advising that the official conference dates will be Tuesday, May 29th and Wednesday, May 30th, with Justice John Paul Stevens slated to speak on 29th. She speculated that his speech will include reference to his new book *Five Chiefs*, but will also hopefully touch on access to justice. Co-sponsorship will be shared by the Clinton School, Bowen School of Law and the Commission. Justice Tuck stated that she and Ms. Johnson had discussions with Dean John DiPippa and Skip Rutherford which resulted in the determination that the Clinton School will cover the cost of travel expenses and lodging for Justice Stevens and his wife, in combination with the cost of the convention center where the initial part of the conference will be held.

Justice Tuck continued to elaborate on details of the conference, including the plan to have three presenters in the morning on the first day of the conference one from each of the relevant fields of focus for the conference (i.e. legal, medical, and education) and the interdisciplinary policies affecting each. The committee is planning to invite the new LSC president, James Sandman, or the LSC board chair to discuss what is presently occurring in Congress, especially related to the LSC funding cuts. After the morning's events and Justice Stevens's speech, the registered conference attendees, totaling about 150 participants, will then move to Bowen for boxed lunches, the potential LSC speaker, and break-out sessions. Tentatively, a reception and book signing for Justice Stevens will follow at the end of the first day, with the hope that the students could meet Justice Stevens. Ron Lanoue is helping to establish a theme with the Second of Promise of Justice Campaign as the underlying message. Real-time recording during the conference will be provided and require a recorder and facilitator for each break-out session; the Clinton and law school students will potentially assist. Information summaries from the real-time recording will be available the next morning for panel discussions specific to the medical, legal aid and education communities.

Mr. Coulter recommended distributing donation cards on first day of the conference. Professor Olson suggested perhaps Justice Stevens could give remarks from his book at the end of the day to a general audience at the reception and focus on access to justice during his speech at beginning of the day. Ms. Adams advised on the compiling of the invitation list, stating that invitees are being considered based on their potential to help make a difference and lend to the purpose of this working conference as prospective problem-solvers, especially individuals and policy-makers from the nonprofit/medical/legal, education communities, local government, key legislators, etc. Justice Tuck specified that the committee will not have to worry about invitations to the open public, as the Clinton School will be handling those

and that the committee will focus on a formal list of invitees for the conference itself. Mr. Morris and Justice Tuck discussed the CLE portion of the event, which will occur Wednesday afternoon, and the possibility to get CLE credit for other parts of conference. Finally, Justice Tuck advised that the committee is trying to enlist sponsors for the reception and meals so that there will be no charge for the conference attendees.

Pro Se/Turner v. Rogers Subcommittee

Judge Spears and Professor Olson distributed a handout to the group titled “Draft of Suggested Revision to the Revised Arkansas Code of Judicial Conduct Current Rule” in regard to *Rule 2.2 Impartiality and Fairness*, which was discussed and reworked at a meeting a few days prior including Judge Cindy Thyer and David Stewart, executive director of the Judicial Discipline and Disability Commission. Judge Spears summarized that as the court handed down the decision for *Turner v. Rogers* the previous June, with the case being the first time that the issue of civil representation entered into a court decision and thus dealing with basic due process, the committee has been tasked with facilitating recommendations that the court might consider to address the case’s clear implications on pro se litigants.

The subcommittee examined Rule 2.2 of judicial conduct with the aim of liberalizing the language on what the judge’s role should be in such cases, comparing it to a similar rule in New Hampshire which has a slightly different definition of the judge’s role. Professor Olson referenced the handout and the present rule, and then the proposal of what the rule should be by only changing the emphasis, not the entire rule. The subcommittee plans to propose revisions to the Supreme Court and to urge its adoption.

The group further discussed the importance of judicial education and focusing on establishing a dialogue with judges regarding what *Turner v. Rogers* means for pro se litigants, perhaps by first reaching out to the Judicial Education Committee Chair, Judge Vann Smith. Suggestions were made to also connect with court clerks and trial assistants as the frontline gatekeepers to self-represented litigants who would potentially be in the best position to provide forms and how-to guides to such individuals; potential survey of clerks through Survey Monkey. Also recommended was the development of a bench book for Judicial Council and other resources for judges encountering pro se persons, as well as potentially bringing in judges with pro se experience from other states who could help train Arkansas judges in the matter.

Mr. Richardson advised that great caution should still be given in pro se cases due to nationwide concerns over Civil Gideon issues and not wanting to lose focus on getting legal representation for people who need it. He stated that by giving forms to an individual versus an attorney, it might be suggested to the justice community that the pro se circumstance has been fully addressed, when in truth, it has not. Mr. Morris suggested that a flier could be created regarding the difference between legal information and legal advice. The group discussed the importance of giving a pro se individual all of the alternatives and having limitations.

Justice Tuck asked the committee as a whole to take a vote on the matter of recommending the proposal and making an ad hoc petition to Supreme Court. The group discussed whether or not to make

the petition broader, i.e., proposing a comprehensive set of recommendations versus just a petition on changing the emphasis of Rule 2.2. Justice Tuck encouraged the move to vote. Mr. Coulter moved to recommend the proposal to the Court, Ms. Walker seconded the motion and it passed unanimously all in favor of petitioning of Rule 2.2.

The group discussed forming an ad hoc committee to work on the petition and an implementation proposal to go with it, including a justification for why the subcommittee thinks the change is necessary. The time frame to complete a draft of the petition and the implementation strategy was set to be achieved before the next Commission meeting, and to include David Stewart on the drafting committee along with Professor Olson and Professor Chuck Goldner; representatives of professional conduct and judicial discipline/enforcement.

Executive Director's Report

Ms. Johnson presented her report, beginning with a summary of results from the Arkansas Access to Justice Foundation's annual fundraising campaign. Though still anticipating the receipt of several outstanding donations, it appears the campaign raised approximately \$130,000 according to initial totals.

Ms. Carter and Mr. Richardson briefly reported on their respective legal aid organizations' present standings in light of funding cuts as well as their own fundraising efforts. Ms. Carter reported that VOCALS was very down in giving and speculated that with year-end totals, they received approximately \$139,000, which clearly did not meet their goal of \$200,000 or even their 2010 year-end total around \$180,000. Mr. Richardson reported that after the \$76,442 from AATJ, LAA's donations were at about \$26,000. Ms. Johnson advised AATJ is still working on an RFP to enlist the services of a fundraising consultant, which will eventually potentially involve a statewide fundraising committee which will involve both legal aid programs.

Ms. Johnson moved on to giving a report of Pro Bono Week and the statewide outreach event that occurred at the end of October to serve first responders by preparing such legal forms as living wills, simple wills, and durable power of attorney. She elaborated on how the event was prepared, advertised and ultimately accomplished, with participation at the law schools involving pair-ups of lawyers and law students. Ms. Johnson stated that the event seemed to energize the lawyers and that AATJ is planning to try to replicate an event similar to last year's seniors' event, which will occur in June at the Hot Springs Bar Association meeting. Ms. Johnson mentioned AmeriCorps member, Phillip Garcia's involvement in helping to develop and implement several outreach elements, garnering resources, and evolving "pro bono in a box" where similar events can be done around the state in order to encourage and inspire attorneys to do pro bono work.

In continuing her report, Ms. Johnson returned to the topic of the funding crisis, mentioning the 14.8% cut for fiscal funding 2012, which was originally anticipated to be only 4%; advising of a combine loss of over \$750,000, resulting in Mr. Richardson's program incurring retrenchment with layoffs, and the necessity of across-the-board conservation of resources. Justice Tuck asked for Ms. Carter and Mr. Richardson to elaborate on the effects of the funding cuts upon each agency.

Ms. Carter reported over a \$360,000 loss in LSC funding, with a 5% loss in 2011, in combination with the Public Legal Aid Fund decreasing as well. She mentioned that VOCALs funds were set aside for a sort of rainy day fund in the event of such dramatic decreases and from these accumulated assets CALS has been able to absorb some of the blow from the funding cuts. Despite this, Ms. Carter advised that the CALS board made a decision regarding attrition, which entailed not replacing staff unless a special position like that of executive director or financial officer was vacant. She continued by stating that CALS may have to do involuntary transfers if staff levels become off in the future. She finished by speculating on future funding cuts due to the development of census-based programs and Arkansas having historically lost poverty funding due to these types of census programs. Ms. Carter closed by stating that in spite of CALS's reserve funds for this year, they are still working to solve how to conserve in the future.

Mr. Richardson advised that Ms. Carter covered almost everything on the funding cuts, but added that there was about an 11% loss in 2004 based on census programs, and that he is not anticipating as drastic losses if such census-based programs cause poverty funding losses in Arkansas once again. He advised that LAA has attempted to carry a budget of two-month operating expenses every year, but presently only has about one month's worth. He continued stating that they have had to lay off several attorneys, have not filled attrition positions, and even laid off three paralegals in the past week (5.5 attorneys, 3 support staff); he posited that their AmeriCorps attorneys are the only reason they are able to stay afloat with service levels. Further, he advised that they will soon be closing the Mountain View office, potentially moving the Fayetteville office to Springdale, and restructuring by trying to go to regional model. This model would entail regional managers and would eliminate pro bono coordinators as managing positions because the ATJC is already fulfilling that end. Overall, it is clear that the funding cuts have had a severe impact on the LAA program. The group discussed the poverty relationship, ratio, the census-based programs, and effects of any other potential funding cuts.

Ms. Johnson advised that in regard to funding, the Arkansas IOLTA Foundation did make grants to both legal aid programs, amounting to \$126,000 to CALS and \$84,000 to LAA. She stated that revenues for the program will continue to be down due to the depression of interest rates. Mr. Coulter mentioned that IOLTA is holding money in reserve. Within the group, both legal aid agencies were encouraged to get on the next IOLTA board meeting agenda.

The group discussed other court funding issues. Ms. Johnson mentioned the Administrative Office of the Court's recent acquisition of a Law Help interactive license. She also spoke about the Arkansas Bar Association's Long Range Planning Committee and its subcommittee focused on promoting access to justice. Justice Tuck then called for a break to be followed by the iProBono Application demonstration from Mr. Whaley.

Old Business

Following Mr. Whaley's presentation the group resumed with old business, including entertaining the motion to move and recommend accepting the meeting minutes from the October 14, 2011 meeting; Ms. Adams motioned and Professor Olson seconded; the motion passed unanimously.

Adoption of Strategic Priorities

Ms. Adams discussed finalizing the strategic priorities for 2011-2013. In addition to the process of fleshing out and polishing up the plan to move forward, also entailed were issues of the time frame involved, intervening circumstances, determining appropriate nomenclature, as well as dealing with uncertain funding in the near future, which she mentioned all made it difficult plan or write anything in stone. Thus, the strategic priorities focus on the overall direction for 2013 and where the Commission is moving, with specific tactical considerations and tactical plans each committee needs to work on in order to fulfill each of the Commission's priorities.

Ms. Adams stated that as dynamic as circumstances are now, there is a need to have a Plan A, Plan B, etc., and a need to come up with short-range action plan that fits in with the strategic priorities to move forward. However, this does not necessarily have to fit into document and can be ancillary and used as reference points as the Commission goes forward. She suggested that mid-course changes can be planned as necessary while looking to the next horizon and making adjustments at appropriate points, especially related to the public funding segment and with support for the Commission's work, the two legal aid entities, as well as other projects each is working on at a given time, etc. Ms. Adams advised that some committees still have work to do on their action plans. She further went on to explain the difference between a strategic priority and a strategic plan.

Justice Tuck asked if the action plans can be adjusted as the playing field changes, and Ms. Adams agreed, stating that that's the recommendation: knowing what the basic direction and plan are while having a contingency plan. She added that this is especially necessary in Mr. Richardson's & Ms. Carter's positions when many obstacles and uncertainties make it difficult to plan. Ms. Adams stated that she is recommending that the Commission approve this and that individual committees come up with their own individual plans.

The group discussed Ms. Adams' recommendations. Ms. Johnson advised keeping in mind an overall service delivery picture, especially focusing on pro bono, pro se, etc. with considerations for the decrease in support, while looking for other sources of support (e.g., the court, etc.). Ms. Adams suggested that capacity building is fundamental to carrying on the Commission's work and knowing what outcomes it wants to achieve. This includes finances, personnel as well as technological capacity, and needing to know who is doing what work (staff, volunteers, etc.). She stated that the priorities should center on what the Commission wants to achieve and having a swat analysis to assess personnel, finances, technology, etc., where we can capitalize on strengths, discover weaknesses, establish a structure to continue building on, and keep cross-checking as we go along.

Justice Tuck opened up the meeting for any discussions, comments or questions. She suggested that remaining committees needing to meet do so in the near future. The group talked about expanding pro se help centers, resource development and potentially looking at the court, not just the IOLTA Foundation to increase financial support. Justice Tuck asked if there were any other issues of discussion and if not, would the group entertain a motion to the committee of the body of the whole to approve

the strategic priorities. Mr. Coulter made the motion and Professor Olson seconded. The motion passed unanimously to be submitted to the Commission as a whole.

Moving on, Ms. Johnson gave a relocation update, advising that the lease agreement has been signed and the lease will begin effective February 1, 2012. She stated that with IOLTA and ATJF moving together, CALS will be reimbursed for shared resources.

Justice Tuck announced the next scheduled Commission meeting date as April 20, 2012.

Justice Tuck adjourned the meeting at 2:47 p.m.