



ARKANSAS
ACCESS TO
JUSTICE
REPRESENTING HOPE

Commission Meeting

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

Commission Meeting Minutes November 16, 2012 12:00 PM

Commissioners Present

Rose Adams
Jean Carter
Nate Coulter
Prof. Chuck Goldner
Judge Leon Jamison

Prof. Kelly Olson
Lee Richardson
George Shelton
Judge Jim Spears (*phone*)
Judge David Switzer (*phone*)

Justice Annabelle Imber Tuck
Andrea Walker
Danyelle Walker

Guests

Zina Frazier
Maggie Hobbs
Amy Lafont
Stefan McBride

Staff Present

Amy Johnson
Erin Jacobson
Kim Marshall

Welcome & Introductions

Justice Tuck called the meeting to order at 12:18 p.m. She began by recognizing Zina Frazier and presented her with an award for her service to the Commission from 2004 to 2012.

Justice Tuck mentioned that both Ms. Frazier and Rep. Bubba Powers' terms on the Commission have ended, and reviewed the new appointments made, including the reappointment of Prof. Chuck Goldner and Judge Jim Spears. She introduced Andrea Walker of Legal Aid of Arkansas, who assumed Ms. Frazier's slot on the Commission, and advised that Rep. John Vines is anticipated to be appointed in Rep. Powers' place once the legislative session begins in January 2013.

Approval of Meeting Minutes from August 17, 2012

Justice Tuck asked if any amendments, corrections or additions were required for the meeting minutes from the August 17, 2012 meeting of the Commission. With no changes or additions to be made she called for a motion to approve the minutes. Ms. Adams moved to approve the minutes, and Mr. Shelton seconded the motion. All agreed unanimously to approve the minutes and the motion passed.

Committee and Project Reports

Court Assistance Committee

Judge Spears presented the Court Assistance Committee report. He began by discussing the CourtHelp Project, reporting that many forms are now available in Spanish, including the order of protection and divorce packets. The Arkansas Legal Services Partnership submitted two grant applications, and was

awarded a grant for automated documents and updating online resources. Presently there are 171 active HotDocs documents.

He also described the work of all partners during Pro Bono Week and the related outreach, including the pro bono-in-a-box events which serviced seniors and first responders. Mr. Richardson added that \$7200 was raised through the Race Judicata pro bono event in Northwest Arkansas.

Civil Right to Counsel

Ms. Johnson presented for Mr. Bill Waddell. She advised that Mr. Waddell and several other attorneys filed a case with the court involving an adoption case that terminated a mother's parental rights. Attorneys for the mother argued that she should have had an attorney appointed to represent her, and about six weeks ago the Court handed down the opinion that the mother did not properly preserve her right to counsel. Mr. Richardson advised that a motion has been filed for another hearing.

Land Preservation Project

Ms. Johnson reported that Mr. Waddell took on a pro bono case for an AVLE client who had inherited some land from her parents, which involved an issue of heirs, ultimately resulting in his filing a quiet title action. Subsequently, Mr. Waddell has expressed a desire to increase education and outreach with issues relating to wills and land and the necessity of having wills in such cases where property is at stake. Mr. Waddell would like to move toward having an event similar to the Responders First or Serving Our Seniors event to service this type of client and case.

Justice Tuck stated that these types of clinics with limited representation could be widely helpful, and could even seek support or assistance from Ms. Adams's organization as a partner to help reach potential clients. Mr. Richardson spoke to the issue from a legal aid perspective, stating that LAA will have an AmeriCorps attorney working on the issue in the Delta region. He warned of a general attitude and history of mistrust from people living in the area toward the justice system due to decades of courthouse prejudice to certain populations in the region. Ms. Carter agreed and cited a similar recent issue involving a will matter and suggested creating a fact sheet, increasing will clinics, and developing a bigger pool of probate and estate lawyers. Justice Tuck agreed with needing to get more specialized attorneys on board with these types of events and potentially working with the Arkansas Bar Association to do so.

Mediation Pro Bono Project

Ms. Johnson reported on the matter of pro bono mediators, stating that folks who work to become certified mediators are required to accumulate a certain number of field mediation hours during their training, thus helping to better prepare them for more effective dispute resolution. Mediation tends to resolve matters more quickly and with less conflict than full litigation does. She advised that she spoke with the Alternative Dispute Resolution Commission and are exploring an opportunity to set up a pro bono mediation project, but may need to work with judges to help identify potential clients. Ms. Johnson advised that Prof. Kelly Olson will be working on this project and offered the opportunity to others if they would like to help.

AG Foreclosure Settlement/Housing Project

Ms. Johnson advised of the upcoming Arkansas IOLTA Foundation board meeting on Monday, at which time the Foundation will determine the distribution of funds and amounts will likely be announced. She added that a coordination working group has been involved in developing strategic plans and suggestions

for the funds, which includes members of ADFA, CALS, Ms. Adams, Prof. Olson, and Mr. Coulter helping with coordination from the two law schools.

Mr. Richardson mentioned that in ramping up to receive and utilize the housing funds, his program's housing work group has attended trainings and conducted their own internal meetings on the matter. Ms. Carter also spoke about creating protocols and a triage system to help direct and assist clients. Ms. Johnson advised of law schools' focus on broader consumer protections. Mr. Coulter added that with service delivery leaning heavily on legal aid, that the law schools can lean on their networks to encourage pro bono work.

Justice Tuck posed the question of how to reach potential clients and reiterated the importance of promotion. Ms. Johnson mentioned that an online intake tool and system is in the process of being developed, and in combination with pro bono volunteers and the Clinton School students' needs assessment efforts, clients should be able to be identified. She suggested holding a public clinic day where potential clients can meet with housing-trained legal staff and volunteers who can triage and direct them based on their described needs.

The group continued discussing methods of identifying potential clients. Ms. Adams referenced a recent advertisement in the Sunday newspaper aimed to draw attention to people affected by the mortgage crisis. Ms. Johnson suggested identifying clients potentially through Realty Trac and mentioned its online listing of monthly foreclosures within the state. Justice Tuck suggested identifying or developing a website where people can go to determine if they qualify for the settlement; and in order to prevent service duplication, she recommended attempting to gain access to the list of names of affected parties of whom the five banks are supposed to be addressing. Mr. Coulter advised on the statute of limitations running on some of the predatory lending cases, and Justice Tuck asked Ms. Danyelle Walker if she had encountered these types of cases in her practice. Ms. Walker advised that she had, but that they have begun to lessen.

Clinton School Legal Needs Assessment

Mr. Richardson asked for the Clinton School students to present a report on the legal needs assessment that they are working on in partnership with LAA and CALS. Ms. Hobbs advised that the students will be looking to do a comprehensive study to determine legal needs of low-income Arkansans.

She stated that documents are to be sent in the next week to the Institutional Review Board to move forward on the project; and that with Mr. Richardson and Ms. Carter, they have collectively decided to work with a list broker (e.g., Acxiom) to push the assessment in order to get a random sample. Bowen's dean suggested using the list broker in order to identify people who fall into the income guidelines and then the broker could gain their contact information. Ms. Lafont advised that clients will be surveyed by mail and an eighth grade language level will be used; while the legal community surveys will be distributed by email. She added that the students will need help to circulate the email once it is ready, which is likely to be in January. Mr. Richardson advised that the brokered list will be demographically and geographically disbursed and that the email survey will go out to attorneys, judges, pro bono attorneys, etc. The students will present their findings at the joint board retreat.

Justice Tuck suggested getting the Arkansas Bar Association's help to distribute the survey. Ms. Adams said she will be happy to help find agencies within the state that can help promote the project. She suggested having a contact number for individuals who have questions about the survey or for those requiring help with completing it; clarifying that any time information can be broken down and its legitimacy ensured, people will be more inclined to participate. Ms. Lafont agreed that such information could be included in the cover letter that will be sent with the survey. Ms. Adams indicated that she would consult agencies to see if they would be interested in being listed on the letter.

Ms. D. Walker asked if there would be an incentive for the clients to complete the surveys. Ms. Hobbs stated that there will be no incentive due to the survey qualifying as human subject study.

Ms. Lafont added that they would like to connect with someone who could help with populations like the Marshallese. Mr. Coulter gave her his card and stated that he could connect her with someone in Northwest Arkansas who could assist.

SJI Technical Assistance Grant Study on Self-Represented Litigants

Ms. Johnson stated that she believes the grant study will be a nice complement to the Clinton School study, and explained that the Commission has engaged consultant John Greacen to perform an assessment of the Arkansas civil court system to determine current levels of access for individuals who represent themselves without the assistance of an attorney. She expounded that Mr. Greacen has a good background in this type of assessment and is familiar with the legal community and its operations. He will be helping Commission staff to conduct a series of focus groups that will engage recent self-represented litigants.

Mr. Shelton expressed his interest in the focus groups, and Ms. Johnson assured that she would connect with him to further discuss participation in his region.

Pro Bono Rolodex Project

Ms. Johnson moved onto reporting on the Pro Bono Rolodex project and its goal of connecting pro bono attorneys to specialized, consulting attorneys who are experienced in certain areas of law. She indicated that pro bono and legal aid staff attorneys will have access to an online directory of these specialized “mentor” attorneys who have agreed to volunteer their time. She concluded, stating this will be a limited scope opportunity for pro bono volunteers.

Pro Bono Week 2012

Ms. Johnson summarized events which occurred from October 20th to October 26th, including Race Judicata, a luncheon at Bowen which recognized students’ pro bono efforts, the Responders First event, and several other events throughout the state. She stated that going forward in the future, she would like to look more broadly at having a committee of volunteers who could work on the planning and begin in early summer. She suggested that sponsors could be engaged in order to garner better participation in programs like Just Jeans.

Fundraising Consultant Project

Moving on, Ms. Johnson advised that fundraising consultant Dennis Dorgan has recently completed the first phase of the project. She and Mr. Dorgan met with attorneys, judges and corporate counsel throughout the state on the issue of developing a statewide fundraising campaign. Mr. Dorgan will have a final report to present at the board retreat in the spring. She indicated that staff will move forward in the next week to begin distributing letters for this year’s campaign. She added that a successful campaign is really a year round effort and that looking to the future it would be beneficial to have a full time resource development person who could explore other types of development. Ultimately, this may require applying for capacity building grants to fund this person’s position, who would primarily work toward identifying funders, engaging donors, and help move toward establishing an endowment fund.

Report on American Bar Association Unbundling Proposal

The group moved onto the discussion of unbundling services and opportunities for limited scope representation. Justice Tuck stated she previously was not an advocate of unbundling, but now is a supporter, stating she would like to appoint a committee to partner with the Arkansas Bar Association, who likely has all of the resource material required to determine the need and who could help recruit pro bono lawyers. She stated that unbundling is already occurring in the clinics and through the pro bono events and believes it can be made feasible for private lawyers to implement in their practices. She suggested that the Commission may want to petition the court about unbundling and wanted to open up the issue for discussion.

Prof. Goldner expressed his support, but stated he knows that many attorneys are hesitant to unbundle and suggested examining Rule 1.2(c). He cited a White County discipline case where an attorney prepared paperwork and then sent the client to court, which resulted in being considered a violation of the rules of conduct. Prof. Olson voiced that guidance on the matter would be preferred. Ms. Johnson added that support from judges will be essential to unbundling and asked for the opinions of the judges present. Judge Switzer stated he believes that the district court could be very flexible depending on the circumstances. Judge Jamison advised that he would be fearful in signing something that is not entirely correct, as he often encounters documents that are incomplete or wrong. Prof. Goldner suggested that documentation for the court should still require preparation by an attorney and require the attorney's name and license number to be listed, as well as potentially an annexing document to detail what specific service the attorney provided.

Justice Tuck stated that it is apparent from a recent conference call on the unbundling issue that Arkansas is behind on the matter. Mr. Coulter and Prof. Goldner advocated using existing resources which are already being utilized in other states. Justice Tuck asked for volunteers to start a committee that will research and work on recommendations in preparation of the October 2013 meeting. Prof. Goldner volunteered to work on the committee, as did Prof. Olson. Justice Tuck welcomed members to refer people outside of the Commission to join the committee, and mentioned consulting with the Supreme Court Civil Practice Committee and Arkansas Bar committee on professional conduct; and to perhaps ask for suggestions from Karen Hutchins or Paul Prater. She further proposed having a judge on the committee. Ms. Johnson suggested Judge Cindy Thyer or Judge Robert Herzfeld.

Ms. Johnson advised that the Commission has been asked to act as a co-sponsor of the resolution prepared by the American Bar Association's Standing Committee on the Delivery of Legal Services, which is to be reported to the House of Delegates, with an online vote anticipated in two weeks.

Mr. Coulter moved to support the resolution. Prof. Goldner seconded the motion. All voted in favor of supporting the resolution and the motion passed unanimously.

Legal Services Corporation Pro Bono Task Force Report

Mr. McBride reported on the LSC Pro Bono Task Force Report, which highlights recommendations for bridging the gap between service needs and recruiting and maintaining pro bono coordination. Ms. Johnson added that part of the report actually focuses on unbundling as well.

Strategic Priorities Update

Ms. Johnson reported on the Strategic Priorities of the Commission and the individual committees. She advised that upon reviewing the action steps and priorities of each committee, it is very clear that much

has been achieved in the past year. She stated that it does appear that legislative strategy has somewhat gone to the backburner, but with the upcoming legislative session involvement will be imperative as many issues will be on the table that directly affect the work that the Commission does.

Justice Tuck encouraged Commissioners with experience to get involved. Mr. Coulter suggested getting J.D. Gingerich involved. Ms. Johnson talked about the legislature's scrutiny of the Bar of Arkansas Fund which ultimately affects the Office of Professional Conduct, the Judges and Lawyers Assistance Program, the Office of Professional Programs, and the Access to Justice Commission. Justice Tuck stated that she will meet with Kathy Webb and others on this matter. Prof. Goldner expressed the importance of finding allies to work together with to help mutually support the fight to keep such fees enacted. He mentioned that he has spoken with Rep. Davy Carter on the issue of filing fees and stated that he was in support of the issue. He added that as this is the first legislative session for both new deans of the two law schools, it may be prudent to keep them informed and engaged as allies who also rely on such designated fees for supported activities. Judge Jamison suggested speaking with the lobbyists for the two law schools—Richard Hudson for the University of Arkansas, and Rhonda Thorton for UALR. Also could speak with Ted Mullinex and Bill Walker.

The group discussed and agreed on the importance of the Legislative Committee taking an active role in the approaching session. Justice Tuck advised that she, Mr. Coulter, Prof. Goldner and Ms. Johnson will work toward promoting the Commission's support of upholding the interests of the legal aid community, and will set up a conference call to discuss strategies for the new session and issues likely to be on the legislative agenda (e.g., Administration of Justice Fund and Landlord-Tenant laws). She acknowledged that legal aid employees cannot work on legislative matters, but Ms. Carter advised that individual legal aid attorneys can always work to educate elected officials.

Commission/Arkansas IOLTA Foundation Memorandum of Understanding

Ms. Johnson stated that members of the Commission had a conference call to discuss the MOU regarding administration of the housing foreclosure settlement funds. The MOU was approved by the members on the call, but will need to be reviewed and approved by the Commission as a whole during the next board meeting.

Executive Director's Report

Ms. Johnson mentioned the Bowen Law School Law Review Symposium to be held February 1, 2013 in Little Rock at the Bowen School of Law with keynote speaker Dale Whitman. The focus of the symposium will be the Uniform Residential Landlord-Tenant Act and Arkansas landlord-tenant laws. The symposium will be simulcast to the University of Arkansas.

Staff are currently in the process of preparing for a limited donation solicitation campaign to keep momentum going on statewide fundraising efforts pending implementation of a coordinated plan per recommendations of the fundraising consultant.

Old Business

Justice Tuck inquired if any issues of old business to discuss and with none raised she asked for open discussion. No further issues were raised, therefore she moved onto establishing meeting dates for the next year, suggesting that next meeting be Friday, February 15, 2013, followed by April 26th, July 26th, and October 25th (Pro Bono Week).

Justice Tuck adjourned the meeting at approximately 3:00 p.m.