Recognizing that there exists today a significant number of individuals earning between 200 percent and 400 percent of the federal poverty level, who do not qualify for free legal services but who still cannot afford a lawyer, D.C. Bar President Andrea Ferster convened a meeting of 24 leaders of the District of Columbia legal community to undertake a daylong dialog on what might be done to bridge that service gap in the District of Columbia. The event, which took place on November 7, 2013, did so with the backdrop of a difficult employment picture among recently minted lawyers, many of whom left law school with substantial educational debt only to find themselves in a market with limited employment opportunities.

“A lot of people have asked me, ‘Why today? Why now?’” Ferster stated as she opened the meeting. “And the reason our discussion is timely is because of what American Bar Association (ABA) President Jim Silkenat has called the ‘access to justice paradox.’ That is: at the same time that so many members of our community lack access to affordable legal counsel, we have many of our own members who are underemployed and unemployed. And some of them are actually starting their own law practices and are willing and able to provide reduced-fee legal services.”

“I do want to emphasize that today we are here simply to examine the problem, or as one bar leader has said, ‘to admire it,’” Ferster said. “We are not obviously going to solve this problem today. But even so, just the fact that we are here today is a giant step forward by virtue of the fact that we are looking at this issue. And it’s my hope that by the end of today’s proceedings, many of you will want to continue this discussion and look at ways that we can work together as a legal community to solve this access to justice problem in our community.”

Executive Summary
The meeting was organized into four sections, each of which will be summarized in this report:

- A review of the current environment with presentations about several programmatic responses;
- A discussion of the forces driving change in the District of Columbia;
- A brainstorming session on possible approaches to the problem that might be suitable for the District of Columbia; and
- A closer look at the pros and cons of four specific models.

The following information is provided as a starting point for the D.C. legal community in hopes that the individuals or organizations interested in pursuing a specific program to meet this need will have the benefit of these perspectives.
The meeting began with a scan of the current environment by Will Hornsby, staff counsel of the ABA Standing Committee on the Delivery of Legal Services, followed by presentations from four individuals who have operated programs designed to serve individuals of modest means: Alan Herman, supervising attorney for the Legal Counsel for the Elderly Hotline; Julie Peterson, executive director of the Montgomery County (Maryland) Bar Association and Foundation; Ana Selvidge, public service programs manager for the Washington State Bar Association; and Fred Rooney, director of the International Justice Center for Post-Graduate Development at the Touro Law Center.

“The numbers of people who don’t qualify for legal aid or pro bono service, but can’t afford full traditional services, is an enormous segment of our population,” said Hornsby, adding that efforts such as bar-sponsored lawyer referral service programs; employer-provided prepaid legal services programs; and even programs in which individual lawyers agree to provide reduced-fee services to certain clients, either individually or through an organization, have not been sufficient.

According to Hornsby, there are several new approaches that have promise in addressing the issue of unmet legal needs for modest-means clients nationwide:

- The ability to offer “unbundled legal services,” in which lawyers undertake limited scope representations with the client’s informed consent. “There is a powerful set of constraints to determine when unbundling is appropriate,” Hornsby said, “but it does permit a greater percentage of people to access legal services because the unit cost is lower, and it enables lawyers to charge their full rate.” He said the ABA has endorsed the concept of unbundling and is encouraging lawyers and bar associations to support that approach.
The availability of self-help centers where people can obtain information to help them in resolving legal matters on their own. These centers frequently are based in courts or law libraries and allow individuals to undertake research through technology tools. And while there is not typically an income requirement to use such centers, Hornsby said the research indicates that the vast majority of clients who use them are unlikely to be able to afford representation.

Programs in which recent law graduates provide services to this client group. One such approach is the ABA’s Legal Access Job Corps, which has been developed under the leadership of current ABA President James Silkenat. The program aims to connect low- and moderate-income individuals with newly admitted lawyers who may not yet have begun the practice of law.

Turning to specifics, four presentations provided insight on the effectiveness of programs aimed at serving clients of modest means.

The first was Alan Herman, supervising attorney of the Legal Counsel for the Elderly’s Hotline, who described LCE’s Reduced Fee Panel (RFP) serving senior citizens in the District of Columbia with incomes between 200 percent and 400 percent of the federal poverty level. LCE identifies eligible clients through its hotline and assigns cases to one of the attorneys who have agreed to serve on the panel. With approximately 15 attorneys currently serving on its panel, the program handles roughly 250 cases annually in a number of subject areas.

In general, RFP attorney panelists agree to charge these clients no more than $90 per hour with an overall maximum fee that cannot be exceeded without the express approval of both parties as well as the LCE. In some instances, RFP attorneys can charge
negotiated fees to the clients. For its part, the LCE receives a portion of those reduced client fees as an administrative fee that helps to defray its operational costs.

The program also allows panel attorneys to offer fixed fee arrangements for certain routine document preparation services such as simple wills or power of attorney, Herman added. In those cases, LCE does not receive an administrative fee.

LCE has an ongoing system of recruiting its panelists, who range from those with a few years of experience in one or more legal fields to established attorneys, Herman noted. LCE fully screens all of its volunteers before adding them to its panel. Once cases are placed, LCE undertakes follow-up to confirm that both parties have connected and are making progress.

Summarizing the program in an article published in the Summer 2013 issue of the publication Management Information Exchange Journal, Herman and coauthor Jan Allen May, LCE executive director, concluded: “The Reduced Fee Panel provides access to the services of attorneys to people who otherwise would have no place to turn and generates a modest amount of income for the attorneys, particularly for those in which negotiated fees are allowable. In addition, the project provides LCE with a modest amount of funding and is an inexpensive program to run, especially if it is integrated into an existing and effective Hotline.”

Julie Peterson, executive director of the Montgomery County (Maryland) Bar Association and Bar Foundation, reported that her bar association operates a lawyer referral service that serves a range of clients, including those of modest-means, but said she believed that the model is outdated.

“I honestly believe traditional lawyer referral programs are a thing of the past. I think there’s really no reason for a lawyer referral program. Every attorney’s got a Web site. If you have access to a computer, you can...
do research. You can do a lot of background work.” With a growing number of clients calling the LRS for reduced-fee services, Peterson said it has become more difficult to recruit attorney panelists who are willing to accept those cases. The result is that the referral service is rapidly becoming an unsustainable business model.

A more promising model for modest-means clients, Peterson suggested, has been laid out by the Collaborative Project of Maryland (CPM), which offers cost-effective ways of resolving family matters including separation, divorce, and custody. According to the CPM’s Web site, its approach ensures that all parties have an attorney available as well as access to mental health coaches, child specialists, financial neutrals, or other neutral experts to assist as needed. The program is funded by a grant from the court system, Peterson said.

“I’m very excited about this because I think it takes more people out of the court system,” she added. What otherwise might be an expensive approach is made affordable because lawyers and other professionals are volunteering their time at reduced fees across the board, she explained. “It’s another way to look at how to meet the needs in a different nontraditional means.”

Another unique approach to meet the legal needs of individuals whose income is between 200 percent and 400 percent of the federal poverty level is the Washington State Bar Association Statewide Moderate Means Program. Ana Selvidge, public service programs manager for the Washington State Bar Association, explained that the program is a partnership with the law schools of Gonzaga University, Seattle University, and the University of Washington. It aims to connect three distinct groups: moderate-means clients in need of legal assistance with consumer, family, and housing issues; attorneys seeking to build their confidence by serving those clients; and students at the participating law schools.
The program uses the Web-based program known as LegalServer that manages information from prospective clients as well as eligible attorney panelists. Client information is reviewed by the staff attorneys at each of the law schools, and if the individual is eligible, an attorney is recommended from its approved panel. Law students assist with the intake process by contacting the attorneys and finalizing the placements, Selvidge explained. In its first two years, the program processed 895 client referrals to 469 attorneys and benefitted from the assistance of 156 law students, she said.

To support attorneys serving on the program’s panels—particularly those who are new law graduates or in their first year of practice—the program has made training resources available on the LegalServer platform. “The program has quite a bit of new lawyers [wanting] to be mentored and shadowed in that first year. Because of that, we have developed training [in] family law, the biggest area of referrals. We also have mentorship opportunities” aimed at developing expertise in family law, consumer law, and bankruptcy law, Selvidge said.

The final presentation was made by Fred Rooney of Touro School of Law, who described incubator programs that are operating in law schools to help recent graduates develop practice skills by setting up a law firm environment to handle cases for modest-means clients with the support and assistance of more experienced practitioners.

After starting his legal career as a legal services lawyer and later a solo practitioner, Rooney actively became involved in supporting law school graduates starting their own careers in the ’90s through his alma mater, the City University of New York (CUNY). Subsequently, he worked with others at CUNY to develop the first incubator program in 2007 after receiving capital funding from a New York State assembly member. Having equipped the CUNY incubator with computers, desks, chairs, file cabinets, a router, and a copier, organizers extended invitations to law school graduates interested in starting solo or small firm practices or in starting not-for-profit organizations to come on board for an 18-month period, he explained.

“What happens when you have a space where people can grow, develop, and really achieve their dreams? The sky becomes
the limit. They will tell you that we help them to ease into a small-firm practice in a way that probably would have been impossible to think of before the advent of incubators,” he said.

Within 18 months, interest in the incubator model spread significantly due to the downturn in the nation’s economy, Rooney said. “Law schools were being badgered by their graduates who were saying: ‘We have loans and we have no jobs. What are you going to do for us?’” From that point on, Rooney said, he was traveling around the country to meet with law schools and bar associations about creating additional incubator programs to meet this demand.

Wrapping up the four presentations, Hornsby turned the focus to the end users and asked the attendees to give some thought to four general questions:

- What can be done to improve engagement between lawyers and modest-means individuals with problems that have a legal solution? Hornsby noted that too often legal services are sought by individuals whose problems do not have legal solutions, while others whose problems require legal solutions do not recognize the need to seek counsel. “This imperfection of engagement, it seems to me, is important for us to address,” he said.

- How do lawyers set a realistic value on the services provided to clients? “If you make $12 an hour and you are quoted $90 an hour for a fee, you still have no idea how much that service costs and you have no predicate for determining the value of that service,” he said. “I think that billable hours are the enemy of value and we need to shift that paradigm and present our services in ways that make people understand that they get that benefit.”

- What is the role of technology in serving these clients? Can solutions such as long-distance lawyering, virtual law offices, or networks of lawyers better deliver legal services to end users?

- How can collaboration both within and beyond the legal profession improve the delivery of legal services to modest-means clients?
To address the possible approaches to serving clients of modest means meaningfully, the participants devoted the next segment of the meeting to discussing what they believed to be the forces driving change in the District of Columbia within seven specific topic areas. Their shared observations follow:

**New Lawyers**
- The employment outlook will continue to be difficult
- Student debt will continue to be a significant burden
- More lawyers will be open to practicing in small firm and solo environments
- Work-life balance will continue to be an important consideration
- There will be fewer mentoring opportunities

**Law Schools**
- Law school enrollment will decline or stabilize
- Curriculums will become more experiential

**Regulatory and Legislative Environment**
- There will be pressure to admit new lawyers to the practice of law earlier
- Adoption of some form of limited scope representation is likely
- There will be an increase in availability of alternative dispute resolution options
- There will be a continuation and expansion of court-based resource centers serving modest-means clients

**Economic Climate**
- Incentives such as loan forgiveness may encourage lawyers to develop practices serving modest-means clients
- The modest-means population will increase
- The number of pro se litigants will increase
- Lawyers will be more amenable to offering alternative fee arrangements
- There will be a significant number of attorneys retiring
Technology
● New platforms will become available connecting lawyers and clients
● New technology will provide cost-effective ways to deliver legal information and self-help tools to consumers
● Videoconferencing will be increasingly used by citizens, lawyers, and the courts

Professional Structure
● There will be a trend toward more solo and small firm practice and possibly away from large firm structures.
● Billing rates and structures will be revised based on client demand
● There will be increased professional collaboration in serving client needs

Client Expectations
● The courts will need to adjust their business operations to interact with unrepresented individuals
● There will be continued growth in the need for legal services by modest-means clients
● Clients utilizing technology platforms to obtain legal assistance will expect rapid responses and instant help
Having heard a review of the current environment and reviewed the forces driving change in the District of Columbia, the participants undertook a brainstorming session that identified 12 possible approaches that could be undertaken with a goal of increasing the availability of affordable legal services to those of modest means:

- Mentoring
- Limited Scope Rule Change
- Reduced-Fee Lawyer Referral Service
- Technology-Based Lawyer Referral Service
- Incubator Program
- Non-Lawyer Assistance Program
- Expanded Self-Help Centers
- Large Firm-Based Program
- New Lawyers Program
- Legal Services at Reduced Fees
- Change Law School Curriculum and Training
- D.C. Bar-Sponsored Program

The group then narrowed the list to four choices that it believed merited further discussion during the meeting: a technology-based, reduced-fee lawyer referral service; a law school-based incubator program; expanded self-help centers; and changes to law school curriculum and training. The ensuing brief discussion focused on the pros and cons of each approach summarized below:

**Reduced-Fee Lawyer Referral Service:** Such an approach was seen as leveraging an online platform to facilitate intake and case placement, building on models offered earlier in the day by the Legal Counsel for the Elderly and the Washington State Bar Association. It was noted that such an approach could use law students for intake and expand the marketplace for attorneys who were seeking to expand their practices, and potentially reach a client base in need of affordable services. Turning to disadvantages, the group noted that there would be some upfront costs in setting up the program, that the online model relied on clients having some level of computer access and literacy, and that work would have to be undertaken to manage expectations of both attorneys and clients.
**Law School-Based Incubator Program:** The advantages of this approach were that it would provide additional skills and business development training for new lawyers in a controlled environment, that it provided goodwill for law schools with their graduates, and that it was easily fundable with grants from foundations and perhaps local governments. The largest disadvantage was that it would represent an expansion of the law school’s mission, and, as a result, could pit core curriculum against practical skills development. Additionally, it was noted that such a program would serve a relatively small number of individuals, particularly if it was done on a school-by-school basis.

**Expanded Self-Help Centers:** This approach envisioned the addition of law students as well as lawyers who would agree to take on representations for modest-means clients at reduced-fee levels. Law students would benefit from the experience, and lawyers accepting cases would expand their practices. Law schools also would benefit from the additional clinical opportunities for both its students and its graduates. Among the potential disadvantages were resistance from the court due to the potential appearance of endorsing particular lawyers, potential conflicts problems, training issues, and space limitations.

**Change Law School Curriculum and Training:** As a starting point, this group said all law schools need to establish clear expectations with their incoming students about where they will end up after graduation. Once students understand the legal landscape, they will be better equipped to prepare for a career, the group said. In addition to existing practical training through clinics, practicum courses, externships, and mentoring programs, law schools might consider offering courses related to law practice management, financial literacy, and technology, perhaps as offerings for law graduates awaiting their bar exam results. It was observed that law schools offer clinical programs primarily to impart value to law students, and, as a result, those efforts likely will continue to have only an incremental impact on addressing the larger issue of providing legal services to modest-means clients.
Thanking all of the participants for their ideas and thoughts throughout the event, D.C. Bar President Andrea Ferster reiterated that the event was designed as a starting point and expressed the hope that the legal profession can find a solution to making affordable legal services available to individuals of modest means in the District of Columbia.

“We are tackling an incredibly difficult issue that has profound implications for the District of Columbia as a whole. Today, we have taken a really important step in addressing this issue, and we’ve created a lot of momentum with which we can now move forward,” Ferster said.

“Because of restrictions that our members have placed on the D.C. Bar in terms of our ability to use member dues, the D.C. Bar is not in a position to fund or staff this initiative beyond convening today’s event and preparing and disseminating a report of today’s proceedings. So whether and how we continue this discussion rests with the people who are part of this group today,” she added.

“So what do we do next? It is my hope that you will be contacting me because you have collectively decided that you do not want this conversation to end. This issue is important—to me, to the Bar, and to the community we serve.”
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