

**RECOMMENDATION OF THE TASK FORCE ON MEETING THE LEGAL NEEDS OF
THE MIDDLE INCOME PEOPLE**

The Task Force requests that the Pennsylvania Bar Association approve the plan as developed and contained in the accompanying report. The plan as envisioned would be to disseminate the proposed program to the various counties and that the counties be encouraged to implement a program as outlined. The plan contains a funding request, approved, of \$5000 from the Pennsylvania Bar Foundation to assist the counties in implementing the program.

**Approved by the PBA Board of Governors on June 20, 2007.*

***Approved by the PBA House of Delegates on June 22, 2007.*

Report Follows

REPORT OF THE TASK FORCE ON MEETING THE LEGAL NEEDS OF THE
MIDDLE INCOME PEOPLE
MARCH 1, 2007

In September of 2004, Pennsylvania Bar Association President Michael H. Reed appointed a Task Force to address meeting the legal needs of the middle income. The goal of the Task Force as set forth in the letter of then President Michael H. Reed was “to explore and develop recommendations regarding the delivery of legal services for people who do not qualify for subsidized legal services and lack, or in some cases perceive that they lack, the income to retain traditional legal services.” The topic, itself, was new to the Pennsylvania Bar Association although it had been studied by the American Bar Association and a number of state and local Bar Associations.

The Task Force is currently co-chaired by Michele S. Dawson, Washington County, and Keith B. McLennan, Montgomery County. The Committee currently consists of the following Members: Lisa Arline Borrelli, Allegheny, Nicole Gerson, Philadelphia, MariAnn Hathaway, Washington, George Gvozdich, Cambria, Robert I. Johnston, Westmoreland, E. Keller Kline III, Lehigh, Tsiwen M. Law, Philadelphia, Christine Hall McClure, Erie, Edward G. Mihalik, Jr., Snyder, Gretchen Mundorf, Fayette, David Lee Narkiewicz, Dauphin, Francis X. O’Conner, Susquehanna, David E. Schwager, Luzerne, William E. Speakman, Jr., Washington, Harvey F. Strauss, Montgomery, Terry Dennis Weiler, Berks, Thomas King Kestler, Center-Board of Governors Liaison, Michael Shatto, Dauphin, Staff Liaison, Pennsylvania Bar Association.

The Task Force has met on several occasions and held many conference calls. The initial report was prepared in April, 2006 but withdrawn so that suggestions of the current PBA President could be addressed. It is the opinion of the Task Force that all concerns have been addressed and that the program suggested should be now disseminated to the various County Bar Associations, so that each County would be

encouraged to implement a similar program for offering access to legal services to persons/consumers of Modest Means.

The Task Force, with such a large task at hand, set out to first “identify the already existing programs, both statewide and nationwide which is currently providing or offering low cost legal services. They then set to identify the effectiveness of these various programs and the possibility of a development of a Model Uniform Modest Means program to be implemented across our Commonwealth. The Task Force has also considered alternative means of assisting those persons who fall within the target group.

The Task Force, in their attempt to identify the “target group”, reviewed first, an article authored by David Lee Narkiewicz, (Dauphin County), titled “A 21st Century Blueprint for Providing Legal Services to the Middle Class”. This article was the focus of the discussion at the initial meeting of the Task Force. At that time, the Task Force determined that there was a specific range of median income families who would benefit most from programs offered through their local County Bar Associations which would enable those persons to afford necessary legal services.

The Task Force recognized that every county in the Commonwealth of Pennsylvania currently offers a program of free legal services for persons who qualify for legal assistance. These programs are largely funded by Legal Services Corporation.

The Task Force then reviewed state and federal Census Bureau information regarding household income, per capita income and persons who fell within the defined poverty threshold. The Task Force reviewed both the United States Department of Health and Human Services Poverty Guidelines as well as the poverty thresholds, which are reviewed yearly and published in the Federal Register. Several programs using the Health and Human Services Poverty Guidelines were identified including, but not limited to, the Head Start Program, the Food Stamp Program, the National School Lunch Program, the Low Income Home Energy Assistance Programs and the Children’s

Health Insurance Program. It was determined that perhaps, a starting point would be to identify a target group which exceeded the Health and Human Services Poverty Guidelines within certain percentage ranges.

Four (4) Sub-Committees were established by the Task Force: (1) Sub-Committee on Education to the Public; (2) Sub-Committee on Education of Lawyers; (3) Sub-Committee on Working with County Bar Associations; and (4) Sub-Committee working with the Pennsylvania Supreme Court. The Sub-Committee Members were then given the task of exploring existing programs within the Commonwealth of Pennsylvania as well as programs existing in other states, such as New York. In addition, certain Sub-Committee Members were to explore alternative ideas such as establishing, via the Pennsylvania Supreme Court, a Rule approving limited appearance as well as enhancing the Pennsylvania Supreme Court website to include forms and publications which would assist the public with certain pro se representations. Several Members of the Task Force also agreed to promote the ideas and goals of the Task Force by presenting a program at the March, 2005 Conference of County Bar Leaders.

The Task Force then set forward to review existing programs, as indicated, both across the Commonwealth and the Nation. A beginning point was the ABA Standing Committee on Lawyer Referral and Information Service packet entitled "Developing a Modest Means Panel". In addition, Modest Means Programs in Philadelphia County, Dauphin County and Montgomery County were also reviewed. Also at the disposal of the Task Force was the American Bar Association's Survey of Program Operations for Modest Means Programs.

The Survey of the American Bar Association of Program Operations for Modest Means Programs identified thirty-three (33) such Programs, nationwide. It should be noted that the thirty-three (33) respondents to the ABA Survey in no way indicates a complete list of Programs currently in operation.

It should also be noted that since the formation of this task force, the organized Bar of Pennsylvania has moved forward with great strides promoting equal access to justice and our legal systems. For instance, the website of PaLawHelp.org provides invaluable information to the legal consumer. However, the average consumer using this service is likely to determine that more formal legal services are necessary. This leads us back to the precise dilemma presented to the task force: that there is a large number of persons who exceed the Legal Aid financial limitations yet find it impossible to meet the cost of those invaluable services.

An additional Sub-Committee of the Task Force was then established to implement the development of a Model Program for the development of a Modest Means Panel, to be disseminated to all of the County Bar Leaders with the goal of meeting the overwhelming need for access to the Legal System for low to moderate income residents whose income exceeds the Local Legal Aid Income Guidelines and whose resources are insufficient to pay prevailing legal rates. The goal here was to suggest a model program that each individual county could implement by providing a panel of competent attorneys who would provide legal services in non-fee generating cases at reduced hourly rates for pre-established fees. The program, itself, would allow attorneys to provide a valuable public service while expanding or broadening their own respective practices.

The areas to be included in the model program are as follows:

- (a) Client Eligibility – The Sub-Committee agreed that eligibility should be based on the Federal Poverty Guidelines which are published through February of each year by the United States Department of Health and Human Services in the Federal Register. The Sub-Committee's determination was based in part on review of other programs which use the Federal Poverty Guidelines. It was suggested that the model program establish guidelines which determine client eligibility beginning at the local legal aid guidelines cutoff up to 200% of the Federal Poverty Guidelines.
- (b) Client Screening – As every county is serviced by a local legal aid program, the model program would suggest that some or many of the initial screenings would take place as prospective clients make application for legal aid services. The model program would suggest that the local

legal aid offices refer those persons who exceed their income and asset levels directly to the Modest Means Coordinator, or the County Bar Director who would be directly in charge at the local level. Additionally, information regarding the Modest Means Program would be made available to the public at courthouse offices, district justice offices, and local libraries.

- (c) Applications – Applications for participation in the Modest Means Program would require a financial disclosure by the applicant along with some verification of income. The panel suggests that three months' verification of wages and a statement of assets. The Program Coordinator or the County Bar Director should maintain a chart indicating the various eligibility levels.
- (d) Attorney Eligibility – Attorneys who wish to serve on the panel and provide legal services for those persons of modest means would make application to designated coordinator or the local bar association director. The application would include the attorney's name, home and business addresses, home and business phone numbers, the attorney's state I.D. number, the date and state of admission, and the specific areas of practice. In addition, the attorney applicant would provide their current malpractice insurance policy, as well as the signatures of two (2) members in good standing of the local bar association who had been in practice for five (5) years or more stating that the attorney applicant is a member in good standing and demonstrates a level of competency in the areas in which the applicant has indicated he or she is qualified to practice. The attorney applicant would certify that they had not received any disciplinary action nor been disbarred from practice in this Commonwealth or any other jurisdiction. The attorney applicant would necessarily be in compliance with the requirements for malpractice liability insurance. The attorney applicant would also be admitted to practice for no less than one (1) year prior to the panel membership application. The attorney would also list on the application their current hourly rate and shall indicate the type of and number of cases they were willing to accept.
- (e) Attorney/Client Fee Dispute – Both the attorney and the client would execute a Fee Dispute Agreement whereby each would agree to submit any fee disputes to the current Fee Dispute Resolution Committee for binding arbitration.
- (f) Areas of Practice – It is suggested that any model means program limit the acceptance of cases to non-fee generating matters. Suggestions were as follows: Family Law; Consumer Law; Housing, Landlord Tenant; Simple Wills (assets less than \$50,000.00); Unemployment Compensation; Bankruptcy; Deed Transfers; Juvenile Matters;

Guardianship Proceedings; Mortgage Foreclosures; Drafting of Powers of Attorney.

- (g) Fees, Rates, Retainers – The model program would suggest two (2) scenarios regarding fees:
 - (1) Flat Rate Fees for certain matters including but not limited to the following: Simple Wills; Powers of Attorney; Deed Transfers; Unemployment Compensation Hearings-Non-Appeal, Unemployment Compensation-Appeals; Support Conferences; Support Hearings; Divorces by Consent/No Assets; Chapter 13 or Chapter 7 Bankruptcies.
 - (2) Hourly rates should be set at 50% of the normal hourly rate charged by the participating attorney not to exceed \$100.00 per hour.
 - (3) In matters where an hourly rate would be charged, retainers would be limited to \$500.00.
- (h) Panel Membership Fee – It was suggested that the coordinator could assess any member of the panel/participating attorney a membership fee to help defray the administrative costs associated with coordinating the program. The membership fee should not exceed an amount equal to the maximum hourly rate approved.

It was then determined that it would be imperative for any modest means program to work, that we would be able to count on the support of the various legal aid entities. A number of the directors of legal aid programs across the Commonwealth were contacted and all have very positively responded. The concern, of course, was to make sure that there would be no burden on the legal aid entities when asked to make referrals to those persons who exceeded their income and asset guidelines.

The Task Force hopes to implement the suggestions from those organizations already providing free legal services for the low income population, as well as the various committees of the Pennsylvania Bar Association in the final draft of the Uniform Model Program.

It is anticipated that each county bar association wishing to initiate this modest means program will incur some start-up expenses. These expenses will be primarily for

publication of the program pamphlet and distribution to attorneys and the public. The Task Force has presented this economic concern to a variety of funding sources, in order to procure some financial support and incentive for any county bar association desirous of implementing this invaluable public service. The Task Force has presented this request to the Pennsylvania Bar Foundation and has received notice that the grant committee has granted a conditional approval for \$5,000.00 in available funds over a two-year period, to be made available to any county bar association who applies for a matching grant of up to \$250.00. Final approval is contingent upon the PBA Board of Governor's approval of the program.

The proposal is for matching funds to be made available to those bar associations wishing to implement a modest means program for up to Two Hundred Fifty Dollars (\$250.00). It is anticipated that these funds will help defray about one-half of the necessary start-up costs for any given program.

It is expected that the individual programs will be self-funded thence forward from the fees generated by the participating attorneys.

The Task Force is also in the process of exploring other avenues which would permit persons of moderate means access to the legal system by representation of attorneys acting in a limited representation arrangement. The Task Force has reviewed the "Main Model Limited Representation Agreement" as a model for consideration by the Pennsylvania Supreme Court. The goal is to propose an addition to the Rules implementing and governing Limited Representation Agreements, which would allow for limited representation agreements between lawyers and clients. The Task Force is currently reviewing rules in other jurisdictions.

The final area of study by the group is in reference *pro se* representation and access to forms and publications which would assist those persons who choose, due to a financial need or any reason, to represent themselves in civil matters. A number of states have made available on their State Court websites, forms and publications which are self-explanatory and, which can be accessed and used by the general public when

representing themselves in civil legal matters. Currently, the Pennsylvania Supreme Court is actively supporting the Equal Access to the Courts initiative. Several counties offer “self help” centers with forms for use by the public, like Carbon, Lackawanna, Northampton, Lehigh and Northumberland counties which now have interactive custody forms; Allegheny County which now has downloadable family law forms and Philadelphia, Lancaster and Dauphin counties with “self-help” centers.

Respectfully submitted,

Michele S. Dawson, Co-Chair
Keith McLennan, Co-Chair
Task Force on Meeting the Needs of the
Middle Income People