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Final Report of the Access to Attorneys Committee of the Massachusetts Access to Justice Commission

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MASSACHUSETTS ACCESS TO JUSTICE COMMISSION
ACCESS TO ATTORNEYS COMMITTEE REPORT

MAY 2017

INTRODUCTION

In 2015, the Supreme Judicial Court's third Massachusetts Access to Justice Commission ("Commission") adopted a Mission Statement which included increasing the legal services provided by private attorneys to those who cannot obtain the services of counsel. To implement this goal, the Commission appointed the Access to Attorneys Committee ("Committee"), chaired by attorneys Joel Feldman and Mary Lu Bilek.

The Committee had nine members, including: Shannon Barnes of Barnes and Leighton LLP, Esme Caramello, Faculty Director of the Harvard Legal Aid Bureau, Jared Correia of Red Cave Consulting, Joel Feldman of Heisler, Feldman & McCormick, P.C, Judge Robert Fields of the Housing Court-Western Division, Laura Gal of Community Legal Aid, Ilene Seidman, Associate Dean of Academic Affairs at Suffolk University Law School and Clinical Professor of Law, Laura Unflat of the Law Office of Laura M. Unflat, Erika Rickard formerly Access to Justice Coordinator of the Massachusetts Trial Court (and currently at Harvard's Access to Justice Lab) and Mary Lu Bilek, formerly Dean and Professor of Law at UMass Law School (and currently Dean of CUNY Law School).

The Committee met for eighteen months to investigate and recommend ways in which the private bar could meet the legal needs of litigants who cannot retain an attorney. It engaged in research, surveys, subcommittee meetings and outreach to determine recommendations to the full Commission. The Committee identified three main avenues for accomplishing its mission:

1. Use of fee shifting statutes as a means of paying lawyers who represent lower-income clients;

2. Use of Limited Assistance Representation ("LAR") in order to better tailor and target services in cases where full representation is not economically feasible/desirable; and

3. Education/training of new lawyers in the skills necessary to develop private practices that utilize these two approaches.

Below, the Committee offers its recommendations and the methodology it employed to reach its conclusions in the areas above, and in other areas which arose during the course of the Committee's work. The Committee thanks the Commission for providing support during its investigation, as it was instrumental in allowing the Committee to issue this report.

Joel Feldman
Co-Chair, Access to Attorneys Committee

SUMMARY OF KEY RECOMMENDATIONS

The Committee considered a large number of options as it determined which recommendations to highlight. Below are the key recommendations the Committee is making to the full Commission. A full accounting of all recommendations is included in the body of the report.

1. Strongly support efforts to expand the right to counsel where the most essential needs of low income litigants are at stake, such as Bill SD. 694/HD. 1448 (the right to counsel bill supported by Boston Mayor Martin Walsh);

2. Further investigate apparent obstacles to the use of fee shifting to serve low income litigants by analyzing existing data from decisions in the Housing and Probate Courts, encouraging the thorough and consistent coding of fee petitions and awards in the MassCourts system to enable greater study and understanding, and educating the bar and judiciary to encourage more fee shifting litigation;

3. Endorse the use of fee awards to level the playing field in Probate Court, including *pendente lite* awards[1];

4. Track usage of LAR in MassCourts and provide consistent LAR information at Court Service Centers;

5. Strongly encourage legal aid offices to increase fee shifting awards as a funding source;

6. Endorse a statewide initiative to implement monthly fee shifting networking initiatives, such as the one employed by CLA and Heisler, Feldman & McCormick, P.C.; and

7. Include LAR and fee shifting components as part of the Practicing with Professionalism seminar required of all law school graduates.

[1] *Pendente lite* awards are those ordered when a Probate Court requires "either party to pay into court for the use of the other party during the pendency of an action an amount to enable him to maintain or defend the action…" G.L. c. 208, § 17.

ACCESS TO ATTORNEYS
FINAL REPORT, MAY 2017

Too often today, litigants come before the court without a lawyer and without confidence that self representation will lead to a just outcome. As one of several committees of the Commission tasked with exploring ways to increase "access to justice" in the Massachusetts courts, the Access to Attorneys Committee ("the Committee") has investigated ways to broaden the private bar's capacity to provide legal services – both *pro bono* and for a fee – to lower-income litigants. This report summarizes the work of the Committee.

The Committee recognized at the outset that the poorest clients have little access to an attorney, even with the existence of legal aid resources and pro bono assistance of the private bar.[2] Anyone receiving benefits or living at or below the poverty line simply cannot afford a lawyer.[3] Less widely recognized is the growing population of people with unmet legal needs who are not completely impoverished, but live in the shadow of federal poverty levels or even somewhat higher on the economic ladder. In 2014, according to the National Law Journal, the national average billing rate for partners was $604 per hour and, for associates, the figure was $307. An individual earning $30,000 annually (about 250% of the Federal Poverty Level, well above the legal aid limits) cannot afford to pay a $5,000 retainer for almost any legal problem. Nonetheless, a lawyer may not be inclined to offer such a person *pro bono* services and, in any event, there remain more people in need of assistance than can be served through *pro bono* services alone. The traditional model—a bifurcated system consisting of two clearly defined parts: full-pay clients and *pro bono* clients—leaves too many without access to legal representation.

The Commission envisions creation of a new model, a spectrum of client-attorney relationships offered by private practitioners, as well as by legal services. Together, the Commission and Committee members identified fee shifting and Limited Assistance Representation (LAR) as two means of enabling broader and more flexible representation of low- and moderate-income litigants. As the Commission noted in its latest mission statement and objectives, access to attorneys, and thereby access to justice, could be obtained in part by "enlarging the number of attorneys in the private bar trained, willing and able to provide civil legal services through limited assistance representation or other means to low- and moderate-income individuals who are unable to afford legal representation and unable to obtain legal aid representation." Massachusetts Access to Justice Commission, Annual Report on Activities, June 2016, Appendix 1, p. 18.

[2]A 2011 study by the Massachusetts Bar Association found that those low income people eligible to receive free legal services due to their incomes could only find attorneys to address 20% of their legal problems, with the other 80% going unmet.

[3]The 2017 Federal Poverty Level for a family of four is $24,600 annually ($2,050 monthly).In Massachusetts, the 2016 TAFDC (welfare) grant for a family of four was $731 per month if the family lived in private-market housing. A disabled individual eligible for the federal SSI program, received $733 per month.

I. Support for the Expansion of the Civil Right to Counsel

While the Committee has diligently researched and documented a range of creative alternatives, we cannot avoid the conclusion that any meaningful effort to increase access to attorneys must start with the recognition of a right to counsel in more civil cases. Indeed, **the expansion of the civil right to counsel would be the centerpiece of this report were it not already under study by the Commission's Self-Represented Litigants Committee**. We applaud that effort and encourage the Commission to prioritize it.

Consistent with this priority, **we recommend that the Commission support bills establishing the right to counsel where essential needs are at stake,** such as Bill SD.694/HD.1448[4], which would establish a right to counsel for indigent tenants facing eviction. The importance of having counsel to ensure just results in such life-altering cases is well documented[5], yet Housing Court statistics show that only 6.9% of tenants facing eviction in that Court had lawyers last year. Preventing evictions prevents homelessness, not only avoiding trauma but saving the Commonwealth money in other areas, including emergency shelter placements, the public health care system, foster care, and policing. The Boston Bar Association's Statewide Task Force to Expand Civil Legal Aid in Massachusetts analyzed these cost savings and concluded that every dollar invested in representation saves $2.69 in costs to the state.

When faced with this issue in other contexts, our courts have wisely recognized the need for individuals facing the loss of important rights to have counsel to defend them in court. *See e.g., Guardianship of V.V.*, 470 Mass. 590 (2015) and *L.B. v. Chief Justice of the Probate and Family Court*, 474 Mass. 231 (2016).[6] Other states have recognized the importance of such a right to counsel where basic human needs are at stake, such as loss of shelter in housing cases.[7] In fact, in February 2017, the Mayor and City Council Speaker of New York City announced a plan to provide court-appointed counsel to all indigent tenants facing eviction in the city's

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[4]The text of the bill is available at https://malegislature.gov/Bills/190/SD694.

[5]*See, e.g.*, Boston Bar Association Task Force on Expanding the Civil Right to Counsel, *The Importance of Representation in Eviction Cases and Homelessness Prevention* (March 2012), *available at* http://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf.

[6] Even where no fundamental right is at stake, the SJC has recognized the important role counsel plays in presenting needed evidence and recently endorsed discretionary appointment of counsel for guardians of minors facing petitions for removal of the guardianship. *Guardianship of K.N.* 476 Mass. 762 (2017)

[7]*See, e.g.*, New York City Bar, *Report on Legislation by the Pro Bono and Legal Services Committee and Housing Court Committee* (Feb. 2015) (supporting right to counsel in New York City eviction cases), *available at* http://www2.nycbar.org/pdf/report/uploads/Right toCounselinHousingNYCProBonoHousingCourtReportFINAL2.27.15.pdf; Judiciary Committee of the Connecticut General Assembly, *Report of the Task Force to Improve Access to Legal Counsel in Civil Matters* (Dec. 2016) (recommending that state legislature establish a statutory right to counsel in residential evictions). *See also* Washington State Court Rules, General Rule 33 (providing counsel free of charge to indigent litigants with disabilities, as a reasonable accommodation).

housing court. Massachusetts should follow suit in housing cases and in other areas where the basic needs and fundamental rights of indigent people are at stake.

II. Fee Shifting

A. The Potential of Fee Shifting to Increase Access to Attorneys in Critical Areas

In many civil cases, fee shifting—in which one party pays the other party's attorneys' fees, allowed by specific statutes—could provide access to attorneys for people who cannot themselves afford to pay a lawyer. There are over a hundred federal fee-shifting statutes and more than sixty in Massachusetts, including in the areas of housing and family law, where thousands of low- and moderate-income people each year face profound loss without the assistance of counsel. In theory, this statutory fee-shifting framework should support a cadre of trained lawyers willing to take housing, family, consumer, and other meritorious cases on behalf of lower income individuals. Indeed, some lawyers have built fee-shifting practices in these critical, underserved areas.

In practice, however, the statutory availability of fee shifting has not dramatically altered the landscape of underrepresentation, particularly in housing and family cases. As noted above, the Housing Court's published statistics for FY16 show that only 6.9% of tenants facing the loss of their homes had counsel. While the Probate and Family Court did not publish a parallel statistic, that court's extremely high number of self-represented litigants, even in high stakes custody and domestic violence cases, is universally acknowledged. Our existing fee-shifting statutes are simply not living up to their apparent potential.

B. Summary of the Committee's Work on Fee Shifting

The Committee believed that to begin to make productive recommendations, we needed to understand *why* our current fee-shifting laws have not more successfully expanded access to attorneys. To do this, the Committee:

- Engaged in and studied several initiatives aimed at improving lawyers' ability and willingness to build fee-shifting practices in an effort to identify effective interventions that would not require changes in laws or rules;

- Conducted a study of fee shifting in housing cases by 1) analyzing the statutory framework, 2) reviewing Housing Court fee awards between 2005 and 2013 using data available on masscourts.org, and 3) surveying lawyers who typically represent tenants about their views on and experiences with fee shifting; and

- Commenced research on fee shifting in divorce, custody, alimony, and abuse protection cases by 1) mapping the existing law and 2) developing a survey to be distributed to practitioners, possibly in collaboration with the Probate and Family Court.

While this research did enrich our understanding of the barriers to broader use of fee shifting to expand access to attorneys, it also highlighted the need for further research before the action steps with the most promise—be they legislative or rule reform, judicial and/or lawyer education programs, or bar association or law school programming—can be identified.

C. Report on Committee's Fee-Shifting Work

1. Evaluation of Existing Initiatives Aimed at Increasing the Use of Fee Shifting

a. Incorporating Fee Shifting into Monthly Lunch Meetings for Western Massachusetts Housing Court Lawyer for a Day Participants

The Committee's first pilot initiative aimed to incorporate fee-shifting training into efforts to recruit and support volunteers for the Western Division Housing Court's lawyer for a day program, where the volunteer pool includes relatively new practitioners who seem open to developing fee-shifting practices. The program had experienced a decline in volunteers, which stakeholders attributed to a lack of community among the volunteers, and a lack of formal trainings after an initial session. To address this concern, the stakeholders organized a monthly lunch meeting where volunteers could build relationships and receive training on relevant legal topics, such as valuing a claim or drafting a G.L. c. 93A letter.

Both the substantive housing training and the development of a supportive community network can aid participants not only in becoming more effective lawyer for a day volunteers but also in successfully incorporating fee-shifting work for tenants into their regular private practices; the Committee hopes the lunches will inspire participants to move in this direction. The lunch meetings have been taking place for eight months and have often had twenty or more participants per session.

In a related initiative, Community Legal Aid has agreed to accept substandard condition cases and direct them to the private bar to be litigated as fee-shifting cases or to litigate the cases on their own. The initial training for this project, which was coordinated with Committee member Joel Feldman, drew thirty lawyers.

While it is too early to measure the impact of these efforts on the number of attorneys doing fee-shifting work in the Western Division Housing Court, the significant numbers of attorneys participating in the various trainings suggests that this work has promise. Next steps might include continuing the lunches and CLA referral project; collecting data on the number of cases taken as a result of the two programs; and, if the programs look useful, working with the Commission to encourage other lawyer for a day programs in other areas of the state to adopt similar measures.

b. Bar Association Training on Fee Shifting in Specific Subject Areas

Recognizing that attorneys who have been in practice one to ten years may still be looking for a niche within which to specialize or to add to their practices, the Committee worked

with the Boston Bar Association to run a program to train lawyers to engage in fee-shifting work in the employment, housing, and consumer areas. The three separate programs, one per subject area, ran from November 2016 through January 2017. The three-part series will be repeated in Worcester, to allow more access from all over the state. Over thirty practitioners will have attended at least one session, and recordings of the programs are available on the BBA website.

Next steps include planning a program on family law fee shifting and exploring ongoing programming/networking, including by the Massachusetts Bar Association, to assist practitioners going forward.

c. Running Start: A Program for Recent Law School Graduates to Start Fee-Shifting Practices

In 2013, members of the Access to Justice Commission began a discussion of ways to encourage new lawyers to build their own fee-shifting practices. Incubators were already in existence at law schools, and much attention had been, and is being, paid to their results. The members instead examined a more streamlined approach that would require a much smaller financial investment at the beginning of the project, and would be a more flexible, less costly training initiative.

The program they developed, "Running Start," would enroll recent law school graduates in a year-long program of trainings on fee shifting and the economics and management of a successful fee-shifting practice. The program would also involve developing good referral sources for fee-shifting cases; assigning participants mentors with experience in fee-shifting work; and the creation of a network of fee-shifting lawyers with their own list serve.

The creators of the program made numerous efforts over the course of the past few years to identify a sponsor to take on responsibility for recruiting students, conducting orientation, arranging trainings, activating case referrals, monitoring the program, and evaluating results. However, despite tentative early interest from Western New England University (WNEU) and Suffolk University, no school has yet committed to implementing the program. While this could signal a lack of interest, it may be more a symptom of the challenges facing legal education at this moment.

The Committee believes this pilot program has promise and thus seeks the Commission's endorsement of continued efforts to identify a sponsor and develop the program. Copies of the 2014 version of the plan and the plan sponsor responsibilities are contained at Appendix I.

d. Fee Shifting in Legal Services

Over the last several years, legal services offices in Massachusetts have faced repeated budget cuts from the loss of revenue from the Interest on Lawyers Trust Accounts program, the federal government, and most other income sources. As one response among many, in 2012, the Commission appointed an Attorney's Fees Working Group to create an initiative that would help legal aid offices collect attorney's fees through fee-shifting litigation in which they were already

engaged. Obviously, this effort is even more important now that proposals appear to be on the horizon to decrease, or eliminate altogether, funding for the Legal Services Corporation.

Initially the Working Group envisioned a comprehensive training program for all legal aid programs in the state. It began by conducting fee-shifting trainings statewide and working with individual offices to develop attorney's fee plans. The Working Group then hoped to advance the program in a proposed second phase by identifying best practices adopted by programs that had proved successful at generating fee income, as well as common obstacles; offering individualized advanced training to programs in their existing practice areas; providing recognition for legal aid programs that had been successful in fee collection; and sharing success stories across programs.

Feedback received by the Working Group showed that all of the programs in the state support the goal of becoming more fiscally self-sufficient through increasing fee revenue. However, though a number of programs met or exceeded goals in the early stage of the program, few made significant substantive changes to prioritize increasing fees, and there was little appreciable response to the Working Group's proposed second phase of support. As a result, the Group has refocused its efforts on using one or more programs as a model of how to implement a significant attorney's fee collection initiative. Joel Feldman, representing the Group, has been working with Northeast Legal Aid and Community Legal Aid to implement such a program in the hope that a successful pilot or two there will show the broader legal services community that more focus on cases where fees are already at issue might result in significant additional resources for the programs.

2. A Study of Fee Shifting in Housing Court

Many tenants' rights are codified in the General Laws, and most of these laws – from prohibitions on discrimination and retaliation to protection of a tenant's quiet enjoyment of her apartment to consumer protection under c. 93A – already include mandatory fee shifting. Tenants are usually able to bring such claims not only in affirmative lawsuits, but also in summary process actions brought for no fault or nonpayment. Yet despite what appears to be a hospitable legal framework, strikingly few tenants can secure counsel. In the summary process cases[8] disposed by the Housing Court in FY2016, a typical year, **only 6.9% of tenants had legal representation, while almost 64% of landlords had representation.**

In an attempt to understand why, the Committee analyzed publicly available data from the MassCourts.org database (hereinafter "MassCourts") and surveyed lawyers who represent tenants in housing cases.

[8]The Court's published statistics do not reveal the percentage of *tenants* who had representation in affirmative civil or small claims cases in Housing Court, as opposed to landlords; they reflect only representation of plaintiffs and defendants, and those party designations are nonspecific outside the summary process context. Moreover, only summary process cases were examined in the Committee's own study due to time and resource contraints.

a. Analysis of MassCourts Housing Court data

The Committee reviewed the summary process case data between 2005 and 2013 in three divisions of the Housing Court – Boston, Worcester, and Western. That data showed the following:

- The low rates of tenant representation are mirrored in rates of judgment: in no-fault and nonpayment cases between 2005 and 2013, landlords won 32,377 judgments (98%), while tenants won only 676 (2%). While judgments do not fully convey the nature of "wins" and "losses" in eviction cases, the 98:2 ratio is still striking.

- The rate of identifiable tenant fee awards was extremely low: out of more than 33,000 no-fault and nonpayment summary process cases, the Committee found only 147 fee awards to tenants, which represents less than one half of one percent (0.44%) of all no-fault and nonpayment eviction cases. Only 25% of the 676 judgments *in favor of tenants* included fee awards. Because fee awards contained only in settlements may not be visible, these statistics are likely under-representative, but the real numbers likely remain low (particularly given tenant lawyers' tendency to waive fees in settlements, as discussed below).

- Landlords received fee awards twice as often as tenants did. Tenants were ordered to pay their landlords' attorneys' fees 333 times, while landlords were ordered to pay tenants' fees only 147 times. While there are no fee-shifting statutes in favor of landlords, landlords can sometimes recover fees pursuant to lease terms they employ.

- Despite relatively consistent caseloads and percentages of tenants represented by counsel, the three divisions studied had differences in the number of fee awards to tenants. Between 2005 and 2013, there were wide variations in the number of fee awards in the various divisions of the Housing Court, with some rarely awarding fees at all. The reasons for this disparity are not evident from the MassCourts data alone; results may have differed for a variety of reasons, including the types of lawyers involved in representing tenants (legal aid vs. private) and the types of cases those lawyers tend to take, the types of housing involved (private vs. subsidized), or the practice norms of the lawyers who practice regularly in the various courts, as well as differences in judicial approaches to attorneys' fees.

Given the limits of this type of analysis, the Committee believes that further study of the case data underlying the statistics would help elucidate the larger question of why fee shifting is under-utilized in housing cases in general and why courts do not appear to be using the same standard when determining whether a fee award should be made.

b. Survey of tenant lawyers

In the fall of 2016, the Committee distributed an online survey to the members of a statewide listserv geared towards lawyers who regularly represent tenants. Twenty-three (23) lawyers responded from a variety of organizations, including legal aid, law school clinics, and

private/solo law firms. Almost everyone who completed the survey had filed at least one fee petition in the previous decade.

While the survey was far from scientific, it did offer some insight into how fee shifting is practiced, and perceived, by those with existing expertise in housing matters. For example:

- Deductions from fee awards can be significant, and vary widely. More than half of the respondents had received a fee award of between 67 and 100% of their request in the last ten years. But one lawyer had received no fees despite winning a fee-shifting claim, 8 had received an award that was less than 33% of their request, and 3 more had received only 34-66% of their request.

- Half of the respondents stated that they did not believe they were fairly compensated by the court for the time they spend successfully litigating fee-shifting claims. The prevailing sense was captured by one attorney, who commented, "I think that the judges feel the issues are not complex and therefore not many hours are needed, but they don't then consider that the issues are simple to us only because we are pretty expert and compensate us highly enough for each hour."

- Almost all respondents believed that if fee awards were predictably higher than they currently felt they were, they would be better able to recover fees via settlement.

c. Housing Study Conclusions and Recommendations

From 2005 to 2013, in three divisions of the Housing Court, over 33,000 no-fault and nonpayment summary process cases went to judgment, yet the Committee was only able to find 147 fee awards to tenants. And these numbers do not capture the many fee-shifting claims that tenants could bring in affirmative lawsuits if lawyers were readily available to help them enforce their rights.

The reasons why the private bar has not stepped in to fill this gap—and why legal aid offices are not more frequently using fee shifting to fund increased staffing—are suggested, but certainly not comprehensively described, by the survey data. There is a widespread, though not unanimous, sense among those who represent tenants that fee awards are below market and insufficient to enable attorneys to sustain law practices in at least certain areas of the state. Regardless of whether this is true, the prevailing sentiment may deter lawyers from entering the field.

The research methods to which the Committee was constrained did not enable an empirical confirmation or rebuttal of this question. We could not look at the amounts of the fee awards in the 147 cases in which they were granted, nor compare the amounts sought in fee petitions and the amounts ultimately awarded, without a review of the fee petitions and awards contained in the court's case files. Nor could we review settlement agreements to evaluate the prevalence of "invisible" fee shifting. Moreover, due to variations in the language used in MassCourts.org entries, the Committee was unable to compare the number of fee petitions to the number of fee awards. Although it may ultimately be difficult fully to disentangle cause and

effect, we believe additional research would enable us to make effective recommendations in an area where more lawyers for tenants are clearly needed. Specifically, we ask that the Commission endorse and encourage the Trial Court's active support of the following additional research:

1. Run the MassCourts data study in all divisions of the Housing Court and potentially the District Courts.

2. Expand the study to look at rate of fee petitions, not just fee awards. Ideally, the research could also identify in which cases fee claims were pled and look at the rate of conversion to fee awards.

3. Conduct a substantive review of all fee decisions in the Housing Court over the past five years to look for patterns in the types of cases that produce–or don't produce–fee awards and in the ways fee claims are reduced by the courts.

The results would be analyzed by representatives from bar and the judiciary, and could be published and used to support judicial and lawyer education programs, all with the goal of increasing the use of fee shifting as a means of leveling the playing field in housing cases and ensuring that an avoidable dearth of lawyers does not lead to unnecessary homelessness and instability for vulnerable families.

3. Study of Fee Shifting in the Probate & Family Court

The Committee has made an initial effort to understand and assess the scope of fee shifting in the family law context. In this context, fee shifting falls into two categories: fees incurred to remedy contempt of an existing order, pursuant to G.L. c. 215, § 34A, and fees incurred in maintaining or defending against divorce actions under G.L. c. 208, § 17 (fees *pendente lite*) and G.L. c. 208, § 38 (awarded at the time of judgment). There is no provision for fee shifting in custody cases involving children born out of wedlock and, although G.L. c. 209C, §1, affirms that such children are entitled to the same rights and protections as those born to married parents, it is not clear that this statement of rights would create a right of one parent to legal representation paid for by the other parent. Based on informal surveys, it appears that fee-shifting awards vary depending on the wealth of the defendant. It is the impression of those surveyed that awards in contempt actions are frequently reduced in moderate- and low-income cases and fees *pendente lite* are rarely awarded outside the upper income brackets. In summary, the Committee's initial investigation suggests that the litigants most in need of fee shifting in order to obtain a lawyer are least likely to benefit from the law's provisions.

Pursuant to G.L. c. 215, § 34A, a finding of contempt for failure to make monetary payment(s) carries with it a presumption that the defendant, in addition to remedying the contempt, shall pay the reasonable attorney's fees and expenses incurred by the plaintiff.[9] Pursuant to the statute, the court must make specific findings addressing a decision not to award fees. Anecdotal evidence suggests that, when the defendant's income is modest or lower, awards

[9] There is no statutory presumption of fees for cases in which the alleged contempt concerns care and custody of children.

are often substantially reduced. No specific findings are required in such cases, and typically none are made to explain the truncated award.[10] Additional investigation would be necessary to determine whether or not and/or to what extent these informal reports represent the norm. However, even if the impression is not the norm, it may still have a chilling effect on the willingness of attorneys to rely on awards for their payment.

The Committee is similarly troubled by the possible underutilization of G.L. c. 208, § 17. Again here, informal surveying of the bar suggests that allocation of fees is commonplace in high-end divorces and less often seen in middle- and limited-income cases. Arguably, fees *pendente lite* are most needed when one member of the couple earns significantly more than the other. Thirty years ago, the Supreme Judicial Court recognized the utility of G.L. c. 208, §17, to level the playing field of divorce stating, "there is too little legal help available to moderate-income women, in part because judges fail to award adequate counsel fees, especially during the pendency of litigation. … Judges must award adequate attorney's fees during the pendency of litigation.'" Report of the Gender Bias Study of the Supreme Judicial Court, p. 20 (1989). Regardless of the cause, it is frequently the case that one party to a divorce has greater access to income and assets than does the other. It is also common for one party to be represented by counsel while the other goes forward self-represented. Rather than ask when it is reasonable to demand that one party to a divorce action finance the legal fees of the other, a better starting point would be to ask when it is not reasonable to expect that the combined resource of a married couple will be used to provide equal access to an attorney for each party.[11]

Finally, G.L. c. 208, § 38, appears to be intended for the limited purpose of providing recourse to a party burdened by an overly litigious opposition. The Massachusetts Appeals Court has affirmatively determined that consideration of an award of fees pursuant to § 38 must be "governed by caution and restraint…." *Krock v. Krock*, 46 Mass. App. Ct. 528, 534 (1999).

Based upon these findings, the Committee recommends that the Commission:

1. Survey the practices of current Probate and Family Court justices, in order to better understand the present and potential reach of fee-shifting as a tool in family court litigation. The Committee, with extensive help from the Harvard Legal Aid Bureau, developed a draft survey, a copy of which is attached to this report as Appendix II.

2. Consider (re)affirmation by the Supreme Judicial Court of the importance of fee shifting, both in divorce cases and in actions for contempt.

[10] At the lower end of the economic ladder, failure to pay child support is sometimes linked to a limited ability or inability to pay. Inability to comply is a defense to contempt and, even where a judgment of contempt enters, courts may be reluctant to direct a portion of a defendant's available income to attorney fees, rather than to prompt remedy of child support arrears.

[11] A recent SJC decision regarding a right to counsel for guardians of minors in actions to remove the guardians recognizes the important role counsel plays in assisting courts to make "accurate and fair determinations" with the "utmost care". *Guardianship of K.N. 476 Mass. 762, 766 (2017)* quoting *Department of Pub. Welfare v. J.K.B.*, 379 Mass. 1, 4 (1979).

III. Limited Assistance Representation (LAR): An Assessment After Ten Years of Practice

Limited Assistance Representation ("LAR") was first introduced in Massachusetts courts as a pilot program in Hampden, Suffolk, and Norfolk counties in 2006 and was permitted in all courts beginning in May 2009. Adoption of LAR marked a break from the longstanding expectation that a lawyer with an appearance in a case would remain in the case through final resolution, except in extraordinary circumstances. Instead, LAR allows the lawyer and litigant to decide together on individual tasks to be done by the lawyer–as few or as many as the lawyer and litigant choose. By providing a commit-as-you-go model, LAR is intended to free litigants from cost-prohibitive up-front retainers and free lawyers from exposure to extended representation with little hope of full compensation. In practice LAR can be, and currently is, used in variety of formats, including:

- LAR defined by stage of litigation (e.g., prepare documents for filing and/or arrange for service; draft motion and/or represent client at motion hearing; represent on all issues from filing through the pre-trial conference)

- LAR defined by nature of work (e.g., prepare forms, ghost write motions and memorandum, but do not appear in court; provide assessment and advice, either at specified junctures or on standby; appear in court using documents prepared by the client); and

- LAR defined by issue (e.g., an LAR attorney addresses custody while DOR addresses support; LAR on a contempt matter only and not on the underlying litigation; a motion for fees *pendente lite*; LAR to conduct discovery)

Ten years have now passed since the initial LAR pilot, yet the number of self-represented litigants continues to rise. These facts raise questions about the efficacy of LAR as a means of increasing access to attorneys. Understanding the relationship between LAR and the justice gap is a complicated undertaking and would require detailed information about several variables. Who are the clients? What sorts of cases are (not) well suited to LAR representation? Does the public know about and understand LAR as an option? What efforts, if any, have been taken to educate the public and practitioners about LAR? The Committee was not able to tackle the broad question of LAR's ability to reach litigants who would otherwise be self-represented. Instead, the Committee's investigation took the initial step of gathering available information in order to get a sense of the landscape. More targeted investigation will be needed to fully understand the impact of LAR and its capacity to measurably increase access to attorneys.

With little hard data available (MassCourts does not currently track the number and nature of LAR appearances in each court consistently), the Committee conducted informal surveys of lawyers, bar associations, volunteer lawyer programs, pro bono programs, and court personnel. From each group, the Committee gathered information about familiarity with, and frequency of use of, LAR services; efforts to educate the public and practitioners about LAR; and perspectives on the benefits of and barriers to LAR.

The Committee's investigation revealed the following:

- A strong, but surprisingly small, group of enthusiasts has developed within the **private bar**. The Committee found a handful of lawyers successfully using LAR as an integral part of private practice, and none among them reported significant challenges to use LAR.

- Some **lawyer for a day programs** have embraced LAR as a means of expanding services provided to self-represented litigants on the day of a court event. The use of LAR appearances has enabled lawyers in the housing courts to provide direct representation, for example, in mediation and for motions to dismiss.

- Similarly, some **legal services agencies** have used LAR to target resources and provide help to a greater number of clients, particularly in the areas of housing and family law.

- Among **bar associations**, engagement with LAR ranged from none at all to providing a list of LAR-certified members and LAR information sheets, to educating members on LAR.

- **Information about LAR is available to litigants** through the courts, but lacks uniformity. As a result, what is understood in one court or county may remain a mystery to the remainder of the Commonwealth.

- **At the court system's administrative level**, the number and nature of LAR appearances is not yet formally tracked, making deeper analysis difficult.

The Committee developed a long list of possible recommendations, which is set forth below. Further investigation would involve assessment of the feasibility and potential impact of the proposed recommendations, followed by prioritization of the list.

1. Compile Hard Data: MassCourts should capture data on when LAR is utilized and for which types of cases and case events. Additionally, courts could keep data on the number of attorneys who are trained for LAR in particular courts. With such data, the use and efficacy of LAR can be better measured.

2. Educate New Lawyers: LAR should be a dedicated subject in the Commonwealth's Practicing with Professionalism seminar for new admittees to the bar. This will introduce all lawyers to LAR and will also introduce best practice concepts.

3. Promote the Use of LAR by Practitioners: The committee believes that LAR needs active, continued endorsement by the courts. Through Bench-Bar meetings, and similar events, the judiciary has opportunities to promote the use of LAR. This could be accomplished by calling on LAR practitioners to present at Bench-Bar meetings; by incorporating LAR into judge's comments when addressing the bar at events; or by sponsoring lunchtime educational events on LAR at courthouses.

4. Increase Pro Bono Efforts by the Private Bar: Efforts for aspirational pro bono hours for Massachusetts attorneys should be supported, and LAR should be promoted as a means of providing those pro bono hours. The BBO should consider discounting annual dues for members of the bar who reach the target number of pro bono hours. Lawyers Weekly, LexisNexis, Westlaw, and MCLE (among other periodicals and services) could offer discounts for attorneys who meet the aspirational hours.

5. Educate the Public: The courts should provide information to the public in three ways:

    a. Information Sheets on LAR – Handouts providing information specific to each court and county and explaining the importance of LAR and how to access it should be made available in each clerk's office, each court service center, and each court library.

    b. Mailing Enclosures – the court should explore the feasibility of including information about LAR with summons. This could be piloted in certain family law, housing, and/or small claims matters.

    c. Posters — In plain, large-print language, large posters should be displayed at court service centers which describe LAR and other available forms of legal assistance.

In addition to these draft recommendations, the Committee would like to highlight concepts/models that came to light during the Committee's investigation and which may also warrant further exploration:

1. Lawyer for a day programs (LDPs): LDPs exist in many courthouses and some programs have made use of LAR to allow volunteer lawyers to formally represent litigants for a single event (mediation, motion to dismiss, trial, etc). The Trial Court should maintain a list of all LDPs and sponsor an annual event to share ideas and best practices among programs.

2. Successful Pro Bono Programs: The Senior Partners for Justice program in the Hampden County Probate and Family Court provides monthly luncheon meetings with guest speakers discussing topics relevant to the pro bono services provided and also to the general practices of its volunteers. The Medical-Legal Partnership of Community Legal Aid has created a similar program in Worcester, and the Hampden County Bar Association is using this model to revive its Housing Court lawyer for a day program. These programs should be replicated across the Commonwealth.

3. LAR "How To" Kits: Written materials, including checklists for attorneys using LAR, (and possibly combined with fee-shifting resources), would assist lawyers seeking to develop LAR practices. Prior to creating new resources, a survey of existing materials should be done, as well as an effort to assess the impact of such projects. For example,

the Colorado Bar Association produced an extensive tool kit, which could be used as a prototype.

4. LAR-based Mentor Programs through Bar Associations: Discussions with both affinity-based and county-based bar associations revealed that many are experiencing declining membership and are looking for new avenues to attract and maintain members. Adopting LAR mentorship programs could be a way for bar associations to attract new members. For example, bar associations could offer new admittees a discount on bar membership and one-on-one mentoring in return for providing pro bono services in three LAR cases. An annual recognition ceremony presided over by one or more local judges would add incentive for all participants.

5. Suffolk County Probate and Family Court Public Education Program: In Suffolk County, the Probate and Family Court has partnered with the bar to provide periodic education programs to self-represented litigants in child custody matters, with the goal of educating parents about child custody law and procedure before litigation begins or early in the process. The Committee has reached out to Chief Justice Ordonez to explore the possibility of using this existing program to pilot an effort to expand LAR practices within the lower-income litigant population. The concept would involve developing a panel of LAR-certified attorneys willing to provide free consultations in return for potential new clients. Participants in the court's information sessions would be offered a voucher for a consultation and a list of participating attorneys in exchange for completion of the information session.

IV. Law Schools: Curriculum Changes and New Initiatives Needed

Law schools have a role to play in educating the next generation of lawyers about the legal needs of modest-means clients and training them to meet those needs in an economically viable way. While the clinical teaching movement has helped promote access to attorneys by both providing free legal services and giving students experience and skills in practice areas where more lawyers are needed, like family law and landlord-tenant, clinical programs have not historically taught students to make such work economically viable. "Incubator" programs like Suffolk's Accelerator or the University of Massachusetts's Justice Bridge aim to fill this gap, but they reach only a very small number of aspiring lawyers.

For law schools to truly make a dent in the access problem, broad curricular change would be necessary, including the creation or expansion of seminars or experiential courses articulating how lawyers add value that differs from what is available over the internet or through self-help; thinking creatively about fees, including representation in fee-shifting cases and in LAR, and how to enter a dialogue with clients about fees; the essentials for running a competent law office; community-embedded marketing and getting clients in the door; and developing the justice aspects of everyday cases. Relatedly, programs to connect students with solo and small firm graduates as mentors and to recognize and honor such graduates would help students to envision themselves as successful community lawyers.

This is a challenging time for law schools, however. The schools are currently simultaneously responding to seismic changes in the profession, a paradigm shift in the way they

are measured for accreditation (from input measures to an outcomes and assessment evaluation), a 29% decline in enrollment nationally since 2010 (and concomitant declines in revenue), media and transparency attacks on the efficacy of a law degree, and dramatic changes in and exponentially multiplying state-specific requirements for bar admission. Moreover, law schools may not want an alumni body replete with solo practitioners and may shrink from the notion that graduating practice-ready lawyers is the responsibility of the academy. The Commission has a role to play in continuing to pressure the law schools to acknowledge the real needs of the legal marketplace and to train lawyers to meet them.

In the meantime, we also offer for consideration two modest and inexpensive actions that the Commission could take to make progress in this area. First, the Commission could expand the professional development of graduates through the development of a video module to be incorporated into the current post-graduate professionalism requirement including data about the access to justice crisis, methods of delivering legal services to low and moderate income clients, resources for lawyers, and access to mentor programs. Second, the Commission could create a video module on access to justice issues distributed to law schools for use on Constitution Day, in connection with the requirement that higher education institutions must offer educational programs about the Constitution on September 17 in order to remain eligible for Title IV funding.

V. Issues for Further Investigation

In the course of carrying out its planned work, the Committee identified three additional means of increasing access to attorneys that merit mention and, in some cases, further investigation.

A. Technology that Connects Clients with Lawyers

Technology entrepreneurs and tech-savvy lawyers have begun to recognize the huge potential for technology to improve legal practice and access to justice. While most of the innovation thus far has targeted existing lawyer-client relationships, or aimed to improve the experiences of *pro se* litigants, some developers have begun to experiment with technology that more efficiently and effectively matches lawyers and clients. One example is the new Mass Legal Answers Online project, which allows low-income residents of the Commonwealth to ask legal questions online and receive answers written by volunteer attorneys. While this program does not aim primarily to create long-term attorney-client relationships, it does permit *pro se* litigants to access an attorney for legal advice.

Other tech projects are focused on finding clients more traditional forms of representation. For example, LSC's Technology Initiative Grants (TIG) have funded legal aid programs to develop online intake systems that both gather and organize client information and produce basic case documents like intake memos, notices of appearance, and even common pleadings and motions. Such an online option can make the intake process more accessible, especially to working or LEP clients, and liberate lawyers from manning the telephones so they can focus on client representation and other substantive work.

Technology might also bring efficiency and quality to bar association and other lawyer referral services which, like legal aid offices, primarily do intake through phone calls and

personal visits, often with very limited staff. Technology has the potential to expand the capacity of these referral sources by freeing up staff time to investigate high-quality referrals. It could also link the various referral services to one another, and to an online network of lawyers looking for certain types of work. Indeed, some entrepreneurs are already looking beyond this to systems that review case data *en masse* and use it to predict outcomes, making it easier for lawyers and clients to assess at the outset whether a particular engagement makes economic sense, and even whether other sources of money—like fee shifting—might be available to pay for legal work on behalf of a low-income client.

Such technology is far from ubiquitous in our state, and the Committee believes that further investigation might produce recommendations that speed its development here.

B. Legal Insurance

Legal insurance functions much like health insurance and, like its medical counterpart (albeit with less frequency), it has historically been offered primarily through employee benefit plans and labor unions. One example is MetLife's MetLaw plan, which at $20/month can offer an employee a network of lawyers offering free representation or significantly discounted fees on the most common individual legal issues, including wills and trusts, housing, real estate, and domestic relations matters. Legal insurance seems to have promise and seems to be undervalued as a means of providing moderate-income people with access to lawyers at critical times, as it is easy to administer and there may be no out-of-pocket cost to the employer to provide this benefit. The Committee believes it merits further investigation.

C. Student Pro Bono

The Committee believes that making pro bono work a precondition of membership in the Massachusetts Bar, as New York has done, may be a fair and reasonable avenue to explore as it may help to make a dent in the crisis of inadequate access to attorneys. We understand that the Supreme Judicial Court's Standing Committee on Pro Bono Legal Services declined to adopt the New York model when it was first introduced, given that, among other things, it wanted to see how the new rule would make a difference. But this Committee urges the SJC Pro Bono Committee to review the New York rule anew, now that several years have passed. Securing such a commitment could take tremendous political support, and it does not seem that there is currently the political will to make it happen without such clear outcomes from New York. If there were, the Committee would recommend devoting the time to developing a proposal.

APPENDIX I

THE RUNNING START PLAN
CREATING SUSTAINABLE LAW PRACTICES
THAT SERVE LOW- AND MODERATE-INCOME FAMILIES

A Plan in Search of Partners

As the market for young lawyers tightens, an increasing number of law school graduates are not able to find law jobs. At the same time, increasing numbers of people are eligible for free legal services but are turned away from underfunded legal aid and pro bono programs. Law schools and bar associations, deeply concerned about both trends, are developing approaches to help young lawyers start community-based law practices serving the legal needs of low- and moderate-income clients; some of these approaches are designed to find employment that reduces the justice gap.

Law schools face declining enrollments if graduates can't find jobs that compensate them for their investment in three years of law school. Bar associations depend on memberships for revenue; unemployed lawyers don't pay dues. The Access to Justice Commission has a goal of increasing the ability of low- and moderate-income individuals to obtain just outcomes in civil legal situations. There are many strategies for improving outcomes, but one of the best is connecting trained lawyers with people facing legal situations who are willing and able to pay for the lawyers' services. To work, this strategy depends upon the lawyers earning a living wage.

This paper outlines one such approach -- the Running Start Plan. The Running Start Plan will identify small groups of newly-admitted lawyers, teach them how to represent low- and moderate-income clients in cases in which their fees will be paid by fee shifting, contingent fees or statutory shares of a recovery, and link each participant with an experienced mentor. In addition, the Running Start Plan will seek to provide the young lawyers with a stream of appropriate cases culled from the flow of cases that are turned away by the legal aid and pro bono systems.

Encouraging appropriate institutions in the state to take on the burden of sponsoring Running Start programs is a contribution to access to justice. In the Springfield area we have identified a number of institutions. We propose that one of them sponsor a Running Start pilot in the spring of 2014.

We hope to demonstrate that recent law graduates can build components of a successful solo practice on accepting low- and moderate-income clients whose legal situations offer the prospect of fees shifted to the opposing party.

The Running Start Plan

The Participants –

Recently-admitted lawyers who desire a community-based practice earning a living that will never equal what partners and associates earn in large firms. The lawyers need to have some source of support during the first year or more of the Plan, whether it is legal work, family support, savings or earnings from a non-lawyering job. No subsidies are included in the Running Start Plan.

A group or participants might be quite focused on a particular court or courts based on the flow of cases that is arranged.

During the first few months participants will face the costs of setting up an office while earning few fees. It will take several years of hard work to establish a profitable practice. Eventually, these community-based practices can provide a reasonable living, paying better than legal aid salaries and affording the lawyer satisfying work helping people obtain justice.

The sponsor will recruit 10-20 recent graduates from among Massachusetts law schools in May 2013 who have passed the bar and who wish to practice in the Springfield area. No more than one-third of the recruits in either case will be employed on a full-or part-time basis in a law firm.

Table 1 at the end of this paper uses graduating data from the class of 2012 to suggest that there is a pool of attorneys from whom to choose, although not all of these graduates will have passed the bar. For pilot purposes, any sponsor should feel free to include members of the class of 2011 and lawyers from small law firms.

The Practice –

The lawyers will be taught to earn a living by handling cases that qualify for fee shifting (opposing party pays the client's fee), contingent fees (fee only paid if client prevails) or other device by which the client avoids even reduced fee lawyer charges. Chief among these types of cases are defending tenants facing eviction or living with substandard conditions, asserting claims for social security and SSI disability, wages and hours and employment discrimination, and consumer debt defense and other consumer issues like utility overcharges. Participants presumably would not delve into all areas, so while the model would be the same, the mix of practice areas would vary.

The Law Offices --

Each participant will set up and run her own law office, perhaps in association with other participants, or renting space in a suite occupied by other lawyers, or working out of her home. The participant's law office will not be in the Sponsor's offices.

The Sponsors –

The Sponsors will offer facilities for training and some continuing relationship to and among the participants. Co-sponsors may be identified, such as affinity bars, MCLE and other organizations are welcome. Sponsoring partnerships are possible.

The Sponsors will contribute their space without charge to Running Start.

Each Sponsor will designate an individual to run its pilot, including recruitment, coordination of training events, participant orientation and interaction and reporting. It is anticipated that the active period for training will be no more than three months, that recruitment will take place during a two month period, and that the two Sponsors and Commission representatives will plan the pilots during an initial month. If the pilots begin February 1 they will conclude phase 1 at the end of July. The Sponsor's lead individual will probably need 180 to 240 hours to perform these functions during the pilot's first six months. Future reiterations with additional participants, if any, will require less time per participant.

Setting up the supply of cases (see below) will take time, particularly in the beginning. If properly conceptualized, the referral of appropriate cases will be funded by the referring entities as part of their grant obligations.

For the initial pilots, a Running Start Advisory Committee will be formed, consisting or three people from each pilot and three representatives of the Commission.

The Supply of Cases—

Legal services organizations, court service centers, social service organizations and others who have more applicants for assistance than they can manage to serve, will enter into agreements to refer cases to Plan participants. Participants will define the kinds of cases they want on referral; no promise of representation will be made (participants will determine whether a referred case has merit). Additional cases may be drawn from court dockets.

Getting representation for people who will otherwise go without lawyers seems like a goal all will find attractive. Identifying people whose cases fit the Running Start model should take no more than a minute or two. Perhaps some costs of the process will count for private attorney involvement credit.

The mechanics of case referral remain to be worked out. Bar referral services, legal aid offices and the array of legal and social services agencies from which cases may come need to be explored more fully. If a local partner such as WNEU, HCBA or CLA are interested in Running Start, the arrangements for case referral will be made.

Some sponsor entity may be funded by the Legal Services Corporation. It can use LSC funds only for the purpose of providing or arranging legal assistance for financially eligible individuals and families. For pilot purposes, such a sponsor will help participants set up to provide legal services that meet LSC's financial guidelines, so its expenses can be paid with LSC dollars. The LSC regulations allow attorneys to claim and retain attorney's fees on cases that are referred to them by an LSC-funded program. While the legal aid sponsor role is focused on eligible individuals, the participant's law practice can accept work from ineligible people as well.

There has been some concern expressed about referring cases to private lawyers who will earn a fee. But the cases referred are ones no one is taking now.

The Training –

Led by Joel Feldman, members of his firm, and other lawyers in community-based practices will teach the group how to select, investigate, plead, litigate, negotiate and conclude the kinds of cases on which participants will rely.

These specialized sessions will be provided against a backdrop of MCLE and other training on relevant aspects of a personal legal services practice, including financial management and business development.

Mentors -- Community-based lawyers will be recruited to act as mentors to the participants, providing pro bono case consultations and help with other practice challenges, such as avoiding cases that will not be productive and getting the most out of cases that are productive.

Qui Bono –

Everyone benefits. Members of the group earn more while practicing law, clients obtain results they would not otherwise have gotten and their attorney's fees are paid by others, legal services organizations see low-income individuals represented who would otherwise have gone without counsel, courts run more efficiently with a higher percentage of litigants represented and sponsors see constituents achieve their goals of practicing law for a living.

Evaluation –

The pilots will be evaluated in three stages: (1) At the end of the training period, to determine if the mechanics of preparing participants are viable and if the participants are willing to start practices; (2) Three months after the end of the training period, to determine if participants are able to begin practices; and (3) One year after the end of the

training period, to determine whether participants have been able to establish the base for a community law practice. Success measures should include keeping the cost of each pilot to the Sponsor below $25,000(?), seeing 80% of participants try to start practices, 60% succeed in starting practices and 40% remain in practice after a year.

If the elements of the Running Start Plan seem viable, the Access to Justice Commission may be asked to endorse the Plan and encourage implementation of a pilot.

TABLE 1

School	Class Size	During 3 years	2012 - Unemployed and Seeking Job as Lawyer	Justice Bridge Two Year K	Solo and Firm less than 11	Running Start Pool
Suffolk	517	10	80	-	80	160
Northeastern	215	0	28	0	27	55
BU	273	0	12	5	20	27
BC	260	0	29	5	27	51
New Engl | B	339	0	63	-	84	147
WNE	160	0	26	-	42	68
UMass-D	44	0	6	-	10	16
Harvard	590	0	14	-	7	21
Total	2398	10	258	10	297	545

RUNNING START: THE SPONSOR'S RESPONSIBILITIES

The Sponsor is the key organization in Running Start. The Sponsor is ultimately responsible for planning, implementing and completing a Running Start participant group. The Sponsor may recruit co-Sponsors, partners and volunteers to help it carry out its tasks.

The Sponsor's tasks are presented chronologically here, in two main categories: Preparation and Implementation.

Preparation Tasks

Initial task--Identify the individual who will be the actual administrator for the Sponsor and the individual's supervisor, and obtain the approval of the institution to become the Sponsor, which may include answering specific legal questions, including potential institutional liability, malpractice liability, funder restrictions. Set up the supervision system over the administrator.

-Review the stages of implementation
- --Are co-sponsors, partners volunteers needed
- --Set the timetable for implementation
- --Identify the resources needed (staff time, space, budget, trainers, mentors)
- --Set criteria for selection of participants
  - --Bar passage
  - --Bar admission
  - --Existing firm or home office
  - --Eligibility criteria for attorneys already in practice
  - --Financial support available (does sponsor review finances with participant?)
  - --Requirement of adherence to the mission of serving low-income communities?
  - --Evaluation—subjective or objective

--Training
- --Design training program
  - --Identify trainers
  - --Identify components if no training module exists for some areas
- --Plan for social, networking opportunities
- --Design mentoring program
  - --Create criteria for acceptance of mentors
  - --Identify mentors
  - --Design mentoring process

--Referrals
- --Identify institutions providing referrals and craft agreement
- --Create criteria for appropriate case referrals
- --Create referral process and logistics, including when participant can reject referrals
- --Marketing plan to create referrals and referring sources

--Evaluation

--Create evaluation system, including initial data, documenting implementation, reporting and analysis

Implementation Tasks

--Recruit co-Sponsors, partners, mentors, trainers and other volunteers

--Set the timetable for implementation of activities

--Recruit participants by working with institutional sources

Activate plan for recruitment of eligible participants by

Select participants using predetermined methodology for selection

--Conduct participant orientation

--Assign mentors using predetermined criteria such a practice areas, geography

--Arrange for conducting of training sessions

--Basic law practice management

--Accounting

--Office

--Legal work

--Fee shifting and contingent fees

--Marketing and obtaining referrals

--Training in the basics of major practice areas and scheduling and arranging advanced training

--Basic litigation training if necessary

--Working with your mentor

--Activate the marketing plans for case referral

--Start initial case flow

--Start regular case flow

--Monitoring

--Obtain feedback on participant experiences including finances and practice areas and litigation needs

--Survey training effectiveness and feedback

--Receive reports on case flow

--Monitor how marketing is being conducted and efficacy

--Monitor mentoring, including practice issues, substantive issues, management issues

--Solve problems as they arise

Oversight

Team leader oversees project administrator

Design team reviews team leader

Design team, team leader and project administrator assess experience, revise plan for next use.