

**THE WEST VIRGINIA STATE BAR
IOLTA ADVISORY COMMITTEE
STATE BAR CENTER - CHARLESTON
September 21, 2021 – Noon**

MINUTES

1. Call to Order

A meeting of the IOLTA Advisory Committee of the West Virginia State Bar was called to order by Chairperson Shannon Smith on Tuesday, September 21, 2021. The Committee members appearing in person at the State Bar Offices were Jennifer Massey, Richard Lehman, and Sarah Brown, who appeared for Jennifer Wagner. Committee members who appeared via video conferencing were Chairperson Shannon Smith, Jennifer Powell, Harry G. Deitzler, Kevin Robinson, Tammie Alexander, Daniel Kimble and Susana Duarte, who appeared for Elizabeth Wehner. Also attending in person at the State Bar offices were State Bar Executive Director Anita Casey, State Bar Financial Director Sarah Hall, and State Bar IOLTA Administrative Assistant/Paralegal Patricia Schoolcraft who served as secretary.

The minutes are presented in the order the items appeared on the Agenda, not necessarily in the order in which the items were presented at the meeting.

2. Review of Minutes of Last Committee Meeting

The Minutes of the June 22, 2021 Committee meeting were approved by consensus.

3. Report from Legal Services Programs

a. Susana Duarte provided the quarterly report for **Legal Aid of West Virginia (LAWV)**, in Elizabeth Wehner's absence, as follows:

- From June 2021 – August 2021, Legal Aid of West Virginia opened **1,724 new cases** statewide. LAWV's statewide caseload continues to increase in the aftermath of COVID.
- Since LAWV's last report, it has continued to serve higher numbers of clients in the areas of housing (329 cases) and public benefits (160 cases).
- LAWV is also helping kinship caregivers who are raising opioid impacted children. In the last 3 months, LAWV has opened 109 infant guardianship and adoption cases, primarily for relative caretakers in situations where both parents are missing, deceased, or unable to parent due to substance use disorder. To better serve these clients, LAWV is creating online, user friendly tools, including videos and guided interview forms, to help them navigate decisions about which legal option fits their needs to create permanency for the children in their care.
- LAWV continues to provide fully in-office client services, although the staff are dealing with unpredictable COVID-19 community spread requiring quarantine or a need to care for

quarantining children. Recognizing that LAWV's in-office technology offers more sophisticated tools to support its staff in serving clients, LAWV continues to balance client and community needs with staffing and safety issues.

Other Program Updates and Highlights for Legal Aid of West Virginia:

1. Substantially increased partnerships supporting LAWV housing and economic stability work: LAWV is collaborating with the West Virginia Housing Development Fund and a number of community partners to provide legal assistance and outreach ensuring that landlords receive payment from the Mountaineer Rental Assistance Program and that tenants can remain in stable housing. LAWV is finalizing an Agreement for federal funds, that would otherwise revert back to the United States Treasury, to be allocated to LAWV to support expanded legal work in the areas of housing and economic stability.

2. Pro Bono Transformation Grant Awarded: LAWV recently received notice that it was awarded a Legal Services Corporation Pro Bono Transformation grant. The grant will provide technical assistance and resources to support LAWV in restructuring its existing work with volunteer lawyers statewide. The funds will allow LAWV, with the help of national experts, to conduct a rigorous program assessment and identify best practices well-suited for West Virginia's needs and challenges. Ultimately, if funded, the grant will support the implementation of improvements to LAWV's organizational policies, management, and operations designed to create a high impact pro bono program focused on priority client services.

3. More services for clients in recovery from substance use disorder via Medical Legal Partnership expansion: LAWV last week received word that the Pallottine Foundation of Huntington will fund the expansion of its current Medical Legal Partnership serving people in recovery from substance use disorder to three new sites over the coming two years. LAWV's current MLP project is with Cabin Creek Health Systems, and its expansion project, with expanded staff, will add MLP projects with Ray of Hope of Charleston, Project Hope of Huntington, and the Williamson Health and Wellness Center. LAWV hopes to secure federal funds to sustain and grow this project to several regional hubs statewide.

b. Sarah Brown provided a quarterly report for **Mountain State Justice ("MSJ")**, for Jennifer Wagner, as follows:

Litigation Update

- Urie v. Adkins: Mandamus action filed to require WV to rescind early termination of pandemic unemployment benefits; now pending before the WV Supreme Court of Appeals.
- GT v. Kanawha County Schools: Class action certified regarding adequate special education services for children in Kanawha County; ordered to mediation.

- Mobile Home Park Evictions: An out of state investor has bought up multiple mobile home parks in southern WV and is raising lot rent from \$175 to \$400/mo. MSJ is filing several individual suits and pursuing policy advocacy on this issue as well.
- Blenko v. Cabell Huntington Hospital: Class action regarding failure of hospital to provide promised benefits to employees. MSJ has filed and fully briefed a motion for preliminary injunction to stop the hospital from terminating benefits on September 30.
- Frashuer v. Suddenlink: Class action regarding bogus fees for paper statements. MSJ also is in the middle of briefing the Motion to Compel Arbitration (with assistance from Public Justice) and a motion to dismiss. MSJ is optimistic it should prevail on both motions.
- Dust mask exposure cases: MSJ have begun filing a series of cases for damages from inadequate dust masks in the mines leading to black lung and death, in which MSJ is co-counseling with Sam Petsonk and Rob Bastress.
- Current open cases: 623 cases currently pending, involving direct, individual representation of clients, with a limited number of impact litigation cases and class actions.

- 287 Consumer Rights (mortgage, debt collection, vehicle, etc.)
- 199 Employment (100 black lung, 99 civil litigation)
- 32 Consumer Bankruptcies
- 22 Education
- 16 Civil Rights (LGBTQ, Reproductive Rights, Expungement, Due Process/Tax Deed, etc.)
- 25 Immigration
- 15 Prisoner Rights
- 9 Benefits/Health Care

Programs/Policy/Collaboration/Outreach

- Advocacy & Access Program: MSJ has launched its Advocacy & Access Program, working to coordinate and improve support and engagement of its client base and social work program. Social work students providing support to clients; reentry services to people leaving incarceration; research and advocacy related to lead poisoning in Clarksburg, including to outreach to past & present clients.
- Health Law Partnership: Launched partnership with National Health Law Project to advocate on health law issues, including access to Medicaid, ADA compliance, and other issues.
- Collaboration with WVU Law Clinic: Working with clinic students to collaborate on issues related to lead poisoning in Clarksburg as well as to assist with the jail health care class action.
- Successful completion of 1st Clifford-Cleckley Fellowship class: Two students of color spent the summer with MSJ as the inaugural Clifford-Cleckley fellows, to great success.

They have expanded our outreach into communities of color and are planning on continuing their connections with MSJ going forward. One student intends to attend law school.

•Hosted two additional PIA fellows: One of whom is applying for funding to return to MSJ on graduation.

c. Ms. Powell advised the Committee that she would be stepping down and introduced Daniel Kimble who will be assuming her seat on the Committee. Ms. Powell then provided the following reports compiled from the five special grantees:

**Center for Law and Public Service, September 2021
Compiled by Jennifer Powell**

The Center is now under the direction of Dan Kimble, who assumed the role in August of 2021. Dan's new role consists of responsibilities for the Public Interest Advocates program, serving as the Executive Director of the WV Fund for Law in the Public Interest, serving as the Access to Justice Commission Director, and serving as the Director of the WV Law Institute.

The Center for Law and Public Service is working within the new parameters of restrictions due to the COVID-19 pandemic to organize pro bono opportunities at the College of Law. We are working with them to host virtual trainings for volunteer opportunities with previous pro bono partners, including the WV Online Legal help program, the Monongalia County VITA program, the ADR society's magistrate mediation program, the Appalachian Prison Book Project, and the Public Interest Advocates programs. In October, the Center will work collaboratively with the Office of Student Services and Engagement to sponsor activities for Pro Bono Week at the WVU College of Law. The ABA designates this week for recognition of and support of pro bono activities. We hope to host virtual projects that week.

As the Center's work now includes Access to Justice, here are some of those more recent accomplishments: Conducted and completed an accessibility study with the use of WVU College of Law students; built connection with ABA and Access to Justice network nationwide; instrumental in achieving accessibility improvements at some local courthouses and the State Supreme court; established relationships with County Commissioner's Association, Courthouse Facilities Improvements Board, WV Circuit Clerks Association, and others; established a quarterly meeting of service providers (Legal Aid of West Virginia; Mt State Justice, WV Senior Legal Aid, etc.) to share information, receive continuing education, etc.; conducted research on lawyer desert issues in WV; joined coalition of groups (ACLU; Public Defenders; Mtn State Justice, etc.) to work on post-incarceration and criminal justice reform issues, including pressuring for COVID-19 testing during the pandemic and the passage of key legislative bills on related issues; developed process for child support modification by inmates; consumer law subcommittee is working to produce education models for high school and college level students related to consumer/legal education; joined in hosting the first Consumer Law Center for Education conference in Charleston, WV; and offered Stakeholders workshops of Legislative updates and Federal COVID-19 funding options.

Opportunities:

1. With the inclusion of the Access to Justice Commission and the West Virginia Law Institute under the umbrella of the Center for Law and Public Service, the Center has new opportunities for student engagement in research and policy making, along with direct impact on this work in West Virginia:
 - a. Exploration of accessibility issues in the present and post COVID-19 judicial environment.
 - b. Raising awareness of accessibility issues thirty years after the ADA.
 - c. Develop Consumer education for senior citizens and high school and college students.
 - d. Seek further Criminal Justice Reform (Post incarceration issues).
 - e. Create a fifth sub-committee with a focus on racial equity surrounding access to justice.
 - f. Create research opportunities for WV College of Law students related to A2J issues.

IOLTA report, WV Fund for Law in the Public Interest report September 2021 Submitted by Dan Kimble, Executive Director

1. The WV Fund for Law in the Public Interest raised **\$67,000** and the Public Interest Advocates raised **\$36,000** to fund public interest fellowships for WVU College of Law students.
2. The WV Fund selected and funded **15** summer PIA fellows who worked in eight different organizations throughout West Virginia. Each summer fellow worked full-time for 10 weeks. Organizations included Legal Aid of West Virginia, Senior Legal Aid, Mountain State Justice, ACLU of West Virginia, Disability Rights of West Virginia, ChildLaw Services, the Harrison County Public Defender, and the Federal Public Defender, Northern District of West Virginia.
3. The WV Fund selected and will fund one full-time post graduate fellowship to a member of the Class of 2021, Kayla Aungst. Kayla will take her fellowship to Legal Aid of West Virginia's Clarksburg office.

ChildLaw Services

Submitted by Cathy Wallace, Executive Director

ChildLaw has 489 open cases.

During this quarter, ChildLaw **opened 51** cases with 41 of them being abuse and neglect cases, 7 DV/Family law, 3 Family Court guardianship cases, 3 felony victim cases, 6 status offender cases, and 1 adoption.

ChildLaw also **closed 40** cases with 32 of them abuse and neglect, 2 dv/family, 1 Circuit Court Misc GAL, 2 adoptions, 1 felony victim, and 2 status offenses.

In addition to ChildLaw's 20th year anniversary celebration activities, ChildLaw is working with Logan County and the eastern panhandle to determine whether expanding its services in these areas is viable and productive for those regions. Judges in both areas have huge needs

for qualified Guardian ad litem and ChildLaw exploring options with other stakeholders in the area.

Additionally, ChildLaw purchased a new home for its home office in Princeton and are busy renovating it for a November opening date.

West Virginia Senior Legal Aid
Submitted by Cat McConnell, Executive Director

In the last 3 months, WV Senior Legal Aid has **served 218 seniors** in 47 counties. WV Senior Legal Aid is seeing an uptick in evictions, financial exploitation, and issues regarding real estate (inheritance and estates never probated, problems with neighbors and easements, widows battling with stepchildren), plus the usual issues of dealing with debt and collections, utilities (especially phone), divorce, insurance, warranties, and grandparent rights. The isolation and general anxiety of pandemic is taking a toll on our seniors, especially those with disabilities. They are really struggling to try to get even the formerly simple tasks of living done safely. WV Senior Legal Aid is not doing any in-person outreach until the pandemic numbers are safer. Sadly, our wonderful staff attorney left for another job so WV Senior Legal Aid is hoping to fill that position soon.

4. Financial Report

State Bar Financial Director, Sarah Hall, provided current financial information. She reported that approximately \$53,949.00 is available for the September IOLTA grant distribution. Following a discussion of the financial report, the Advisory Committee agreed, by consensus, to distribute the \$53,949.00 to the grantees. The grantees abstained from the vote.

5. Old Business

Ms. Casey advised the Committee that the proposed Administrative Rule amendments are with and awaiting the Supreme Court of Appeals review. Once the Court has reviewed the amendment, the Court will establish a comment period and the proposed amendments will be published for public comment.

6. New Business

None

7. Next Committee Meetings – The next meeting of the Committee will be in-person at the Bar Center and via Zoom conference beginning at **noon on December 14, 2021.**