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A 'MODEST' FIRST STEP FOR CIVIL JUSTICE PLAN

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ALBANY -- Efforts to provide free or low-cost civil legal services for the poor should focus on those facing dire situations such as foreclosure or eviction, the New York State Bar Association House of Delegates voted Saturday. Finding money for more sweeping reforms would be unrealistic for now, the delegates concluded.

The bar group's governing body adopted a report from the President's Committee on Access to Justice outlining the various populations in New York that are poor and could be in need of civil legal services, from 2.4 million people without health insurance to prison inmates. But the report conceded that achieving broad coverage for the indigent 'will take time.'

'This report calls for the implementation of some immediate, relatively simple, yet enormously compelling incremental steps that New York State can and should take to move us toward a civil right to counsel in cases concerning basic human needs,' stated the report, titled 'Toward a Right to Counsel in Civil Cases in New York State.'

Also Saturday, the House of Delegates approved proposals:

- Urging the Legislature to recognize a right to counsel for low-income people facing eviction or foreclosure proceedings. A bill providing those protections for low-income seniors has been introduced in the New York City Council and state Senator Liz Krueger, D-Manhattan, has announced she will introduce a similar bill in the Legislature in 2009 for low-income seniors and people with disabilities facing eviction or foreclosure.
- Urging the Legislature to expand the provision of counsel in unemployment insurance cases. Currently, claimants deemed eligible for benefits by the Unemployment Insurance Appeal Board have a right to counsel if eligibility is being challenged before the Appellate Division or Court of Appeals. The state bar committee recommended recognition of a right to counsel for the indigent earlier in the process when defending before the board a finding by an administrative law judge that they are eligible for unemployment benefits.

The House of Delegates shelved a third resolution Saturday to provide a right to counsel in civil proceedings for people who are unable to represent themselves due to mental or physical disability. Several delegates said further discussion of the item is necessary and the House of Delegates deferred action until the state bar's

annual meeting in January in New York City.

The president's committee is co-chaired by Michael E. Getnick of Utica, the president-elect of the state bar, and U.S. Magistrate Judge George H. Lowe of Syracuse.

#### Economic Reality

Laura K. Abel, a committee member who helped present the resolution to the House on Saturday, said in an interview that narrowly defining the new civil legal services the state bar is promoting in the short term is 'absolutely recognition of economic realities.'

'It is also based on consideration that you have to start somewhere,' said Ms. Abel, deputy director of the justice program at the Brennan Center for Justice at New York University School of Law.

Andrew A. Scherer, chairman of a subcommittee to the president's committee on civil legal services for the poor, said the resolution adopted by the House of Delegates represents 'modest and baby steps, but they are not insignificant ones' in moving toward a better system.

'There is enormous need out there,' Mr. Scherer, executive director of Legal Services NYC and a member of the president's committee, said yesterday in an interview. 'Hardship and misery will come cascading down like Niagara Falls. I think this is going to be an incredibly tough time for poor people.'

The state bar was one of the organizations co-sponsoring a resolution approved by the American Bar Association in 2006 calling for the provision of adequate civil legal services for the destitute. Since at least 1990, the New York State Bar has recognized a serious deficiency in the availability of legal programs for the needy.

The committee noted that the law provides New York judges with the discretion to appoint counsel for civil litigants who have sought leave to appeal as a poor person. But it said counsel is 'rarely' appointed under the law because courts typically have not set aside money to pay the attorney's fees and the law does not specify the standards for when the court can appoint counsel.

The committee did not estimate the cost of providing the enhanced legal services to those facing eviction or foreclosure and in the unemployment insurance cases.

Civil legal services in New York are primarily funded through the Interest on Lawyer Account (IOLA) fund and through the state budget. However, due to budget constraints and a drop in income in the IOLA fund, available funding is expected to drop to below \$30 million in the 2008-09 state budget from about \$40 million in the 2007-08 budget.

Advocates for improved civil legal services generally say that only about 20 percent of the civil legal needs of the poor are being met.

Senator John A. DeFrancisco, R-Syracuse, and Assemblywoman Helene Weinstein, D-Brooklyn, the chairs of the Judiciary committees in the Legislature, did not return calls seeking comment yesterday on the state bar's proposals.

#### Other Action

Also during the bar's autumn meeting in Albany:

- The organization's executive committee approved Stephen P. Younger of Patterson Belknap Webb & Tyler as second vice president, a post that puts him in the line of succession to become president for one year beginning on June 1, 2010.

Mr. Younger is a commercial litigator and past chairman of the Commercial and Federal Litigation Section. He is also counsel to the Commission on Judicial Nomination, which is currently screening candidates for consideration by Governor David A. Paterson for a successor to Chief Judge Judith S. Kaye.

The House of Delegates will vote on Mr. Younger during the group's annual meeting in January.

Bernice K. Leber of Arent, Fox, Kintner, Plotkin & Kahn is the current president of the state bar. Mr. Getnick of Getnick Livingston Atkinson Gigliotti & Priore in Utica, is president-elect. Mr. Getnick will become president on June 1, 2009.

The bar association rotates the presidency between upstate and downstate attorneys, with lawyers from suburban New York City also getting a regular turn.

- Members of the House approved creation of a new section on senior lawyers and designated Justin L. Vigdor of Boylan, Brown, Code, Vigdor & Wilson as its first chairman.

A committee established in 2006 to explore the need for the new section found that about 18,500 of the group's 74,000 members are over 55. It projected, based on a survey of members, that about 3,400 lawyers age 55 and up could be expected to join a new section.

Among the concerns of the section will be easing the transition of lawyers into retirement, helping them plan for the transfer of clients to other attorneys, provide financial planning strategies and encouraging older lawyers to stay active with pro bono assignments in retirement or semi-retirement.

The survey of 1,612 state bar members age 50 and above also indicated widely differing attitudes about retirement. Of those surveyed who had yet to retire, 20 percent said they planned to retire before 65; 23 percent plan to retire between 65 and 69; 24 percent planned to retire at 70 or older; and 12 percent said they would never retire.

Twenty-two percent said they were uncertain about their retirement plans.

Just under half of the attorneys surveyed said they had made no 'practice continuity' arrangements for their clients to be represented in case of their death or disability, and of those who have lined up 'successor' attorneys, only 15 percent said they have informed their clients of the arrangement.

- The House of Delegates adopted the report and recommendations of the Special Committee on the Civil Rights Agenda. Its report focused on improving access to quality public education, reducing the disparity between minority and nonminority youths in the juvenile justice system, improving voting procedures and increasing the use of DNA testing to reduce instances of wrongful convictions.

The committee also concluded that one remedy for the discriminatory use of peremptory juror challenges based on race or gender, as prohibited by the U.S. Supreme Court in [Batson v. Kentucky, 476 U.S. 79 \(1986\)](#), could be for a verbal instruction to counsel for both sides prior to jury selection.

The committee stopped short of recommending that peremptory challenges be eliminated, but it called on the state bar and other legal groups to study the feasibility and implications of doing so.

The committee chairman, former Court of Appeals Judge George Bundy Smith, said he personally favors eliminating peremptory challenges.

'I think the Legislature could hold hearings on it,' Mr. Smith, now a partner at Chadbourne & Parke, said in an interview. 'Give everybody a chance to weigh in, both district attorneys and defense attorneys. I think there would be opposition from both groups. But sitting on the bench for 31 years, I have come to the conclusion that Thurgood Marshall was right when he said peremptory challenges ought to be done away with.'

The Smith committee was formed in 2006 to identify areas where civil rights improvements should be made.

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