

CHARLES R. JOHNSON  
CHIEF JUSTICE

**BOSTON MUNICIPAL COURT DEPARTMENT**  
TRIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS  
EDWARD W. BROOKE COURTHOUSE  
6TH FLOOR  
24 NEW CHARDON STREET  
BOSTON, MA 02114-4703

TEL. (617) 788-8700  
johnson\_c@jud.state.ma.us

January 15, 2008

**Personal & Confidential**

Chief Justice Herbert P. Wilkins  
11 Edmonds Road  
Concord, MA 01742-2649

***Re: Barriers to Access to Justice in Massachusetts***

Dear Chief Justice Wilkins:

Thank you for taking time to meet with me and other representatives from the Boston Municipal Court Department on Wednesday, December 19, 2007 to discuss the report, Barriers to Access to Justice in Massachusetts. Our discussion surrounding the Report resulted in a candid exchange about its findings and recommendations. Acknowledging the constraints of time, resources and logistics under which the committee worked, I commend the committee for providing a solid framework to begin the broader discussion throughout the legal community regarding those areas of civil litigation that may constitutionally require or socially mandate the services of court-appointed counsel or lay advocates. In what follows, I have tried to summarize our views, as expressed at the meeting, on some of the key aspects of the Report.

The Report's recommendations do not rest on a solid empirical foundation. In this era of many deserving but competing social needs, the Report's anecdotal foundation may serve to cause some to criticize, if not dismiss, the Report's premise as too speculative to warrant the significant resource allocation and policy changes necessary for implementing its recommendations. If the Report were to contain more objective data, some of which could possibly be extracted from the Trial Court's increasingly sophisticated automated case management system, the legal community and various governmental stakeholders might more accurately assess the scope of the problems addressed in the Report and their potential impact on access to justice. The multiple levels of advocacy required for even modest implementation of the Report's recommendations is unlikely to be achieved without further study utilizing more objective data-collection protocols designed to verify and buttress the conclusions outlined in the Report.

The Report invites skepticism when using a broad, constitutionally-based “Criminal Gideon” analogy to justify mandating the appointment of counsel in civil proceedings. The presence and scope of a constitutional right to appointed counsel in civil proceedings remains largely undecided, and the Report’s recommendations seem precarious atop such an area of the law which is still in flux. We agree that the appointment of counsel for low-income persons in adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health and child custody is compelling social policy, and we agree that the specific instances referenced in the Report are situations that *may* warrant the appointment of counsel. However, extending the right to counsel in civil proceedings as a matter of public policy requires a collaborative and comprehensive study by the judiciary, legislature and the bar in order to fully determine the legal, ethical, and fiscal implications of such an extension, particularly in light of current problems providing representation in criminal proceedings because of the sheer volume of cases and the limits of legislative funding. In the absence of a judicially defined constitutional requirement, or at the very least, a more comprehensive, collaborative study, we are concerned that the important recommendations of the Report will not be given the attention they deserve.

Judges should issue support orders in Chapter 209A matters if doing so is in the best interests of the children at the time the abuse prevention orders are issued. The Report suggests that there are judges within the Trial Court who do not enter support orders in abuse prevention cases when issuing such orders would be appropriate. We have not been able to identify any specific instance where judges have failed to do so in this Department; however, we will continue to educate judges regarding the scope of their discretion in this important area of the law. We will, at a minimum, raise the importance of this specific issue with our judges and, if necessary, conduct additional judicial education and training.

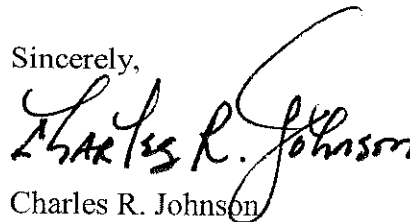
The use of lay advocates in various areas of practice, such as domestic violence, housing and juvenile proceedings should be subject to further study under the auspices of the Supreme Judicial Court. Our concerns center on training, certification, licensing and discipline. Before amending the rules that govern the practice of law to permit the use of lay advocates in court, and establishing the certification and training of lay advocates by the judiciary, as currently proposed by the Report, there should be full and complete consideration given to the importance of maintaining the impartiality of the judiciary, the impact lay advocates will have on the bar, and how lay advocates should be regulated and disciplined in the event of misconduct or ineffective assistance. As Commissioner David Rosenberg, Esq., suggested at our meeting, the Committee struggled with these same concerns and stated that they were raised many years ago when law students were allowed to practice under S.J.C. Rule 3:03. This is certainly an issue that the Supreme Judicial Court should study further, with as much opportunity for comment from the legal community before we begin a process of amending the rules governing the practice of law.

This department is constantly working on ways to improve our assistance to the public, especially those who appear *pro se* in our courts and clerks' offices. Although great strides have been made relative to providing helpful legal information to *pro se* litigants at our courts' public counters, the need for clerks' office personnel to continue to provide such information in a timely, effective, and informed manner is an on-going goal within this court department and the Trial Court. One initiative already underway involves the publication and distribution of the Trial Court's first "user manual" for clerks' offices personnel and staff. The manual is intended to guide staff by offering useful and practical suggestions on how to handle questions posed by *pro se* litigants. We also support the distribution of additional informational literature in several languages.

Finally, we would suggest that the many activities and initiatives currently underway throughout the seven Trial Court departments and the individual divisions be highlighted in the Report. Unfortunately, the Report seems to give little attention to initiatives and activities already underway throughout the Trial Court departments that both directly and indirectly affect low-income civil litigants. Some of the initiatives we have already undertaken in this court department include, an access and fairness survey for all court users; the use of alternative dispute resolution services by volunteer lawyers of the Boston Bar Association; the establishment of specialized sessions involving domestic violence, mental health, and substance abuse; the implementation of effective case flow management tools; and professional responsibility education and training for court staff.

Thank you for allowing us to offer our comments on the Report and its recommendations. We are confident that the Committee's work will serve as a catalyst for the Trial Court to continue its efforts too ensure that every person, no matter their life circumstances, will have access to justice in the Commonwealth of Massachusetts. We are, of course, available to help in the development and implementation of the Report's recommendations when and where appropriate.

Sincerely,

A handwritten signature in black ink that reads "Charles R. Johnson". The signature is written in a cursive style with a large, sweeping flourish at the end.

Charles R. Johnson  
Chief Justice

cc: Chief Justice Robert A. Mulligan, Administrative Office of the Trial Court  
Chief Justice Lynda M. Connolly, Administrative Office of the District Court Department  
Francis S. Moran, Esq., Supreme Judicial Court  
James T. Van Buren, Esq., Commissioner, Barriers to Access to Justice in Massachusetts  
David W. Rosenberg, Esq., Commissioner, Barriers to Access to Justice in Massachusetts