

Mobilizing Judges, Lawyers, and Communities State Access to Justice Commissions

By Chief Justice Karla M. Gray and Robert Echols

Name This State

- Thanks to strong leadership from its access to justice commission, this state won a new legislative appropriation of \$2.5 million in 2007, bringing federal funding for civil legal aid to \$7.5 million.
- With state supreme court authority, its access to justice commission is implementing a self-represented litigants plan and a system of local court-based pro bono committees.
- Its supreme court adopted a mandatory pro bono reporting rule in 2008.

Which state is it? New Mexico, which created an access to justice commission in 2004, just four years ago.

This question and its answer were presented as part of “Name That State!,” a mock game show that concluded the seventh annual National Meeting of State Access to Justice Chairs held recently in Minneapolis. Justices, judges, bar leaders, law school professors, court administrators, and representatives of the legal aid community converged on the city for the conference this past May. Forty states and the District of Columbia were represented by more than 120 chairs or members of state

access to justice commissions, as well as individuals from states interested in creating access to justice commissions or otherwise increasing their efforts to expand access to civil justice.

The increasing number of state access to justice commissions has been one of the most striking and consequential justice-related developments of the past decade. Access to justice commissions bring judges and other representatives of the courts, the organized bar, legal aid providers, and other key stakeholders together to expand access to civil justice for low-income and disadvantaged people.

Judicial involvement is almost certainly the single most important factor in the success of access to justice commissions. It distinguishes these commissions from traditional bar-based legal aid or access to justice committees. Although state bar committees have been—and continue to be—extremely effective in a number of states, an entity created by the state’s highest court in conjunction with state bar leadership has built-in credibility and visibility that typically cannot be matched. The chief justice or another state supreme court justice is the co-chair or vice-chair of state access to justice commissions in a number of states, and the impact of that leadership cannot be overstated. In addition to raising the visibility and credibility of the access to justice mission as a whole, supreme court

leadership can greatly enhance the effectiveness of efforts to increase state funding for civil legal assistance, to increase lawyer pro bono services, and to make justice more accessible to low-income people. Federal judges, who serve on commissions in several states, can be similarly effective. At the bottom line, judicial involvement at all levels and in all appropriate ways plays a key role in ensuring the effectiveness of access to justice efforts.

Minnesota Chief Justice Russell Anderson opened the Minneapolis meeting. New Hampshire Chief Justice John Broderick Jr. delivered a moving speech on the responsibilities of both judges and the bar in actively moving toward equal justice by expanding access to justice. Participants attended a broad spectrum of breakout sessions and discussion groups on such issues as barriers to justice for non-English speakers, encouraging corporate counsel involvement, obtaining cy pres awards for legal aid, trial court based pro bono committees, revenue enhancement strategies for Interest on Lawyers Trust Accounts programs (IOLTA), involvement of law librarians, and legal aid recruitment and retention.

Although structures and composition vary from state to state, the basic model of access to justice commissions remains essentially the same.

- Access to justice commissions typically are created by supreme court rule or order, often in response to a petition or request by the state bar. In a few states, they are created by the organized bar with supreme court support, but not by supreme court rule.
- Commission members are judges and court representatives, the organized bar, civil legal aid providers, law schools, and, in some instances, members of the executive and legislative branches of state government. Some commissions also include representatives of businesses, churches, civic organizations, and other groups.
- Access to justice commissions generally have a continuing

existence and numerous ongoing projects, as distinct from one-task groups such as blue-ribbon entities created to issue a report and then sunset. Some commissions were created for an initial three-year term and subsequently renewed; others have an indefinite term with members appointed to limited, but renewable terms.

- The commissions have a broad charge to assess the civil legal needs of low-income people in the state and to develop, coordinate, and oversee initiatives to meet those needs. Implementation may be the responsibility of participating groups or access to justice commission task forces.

In addition to commission members, many other individuals are involved in a commission’s work through a structure of committees dedicated to specific areas of need. Access to justice entities typically strive to:

- Increase public awareness of the enormous need for expanded access to justice and civil legal assistance to low-income residents through legal needs studies, communications campaigns, hearings, and other events;
- Increase state-level funding for civil legal assistance through legislative appropriations, fee and fine surcharges, special fees such as pro hac vice, rule changes to increase IOLTA revenues, private bar fund-raising campaigns, cy pres awards, and other methods;
- Increase attorney pro bono service via increased judicial involvement, development of statewide structures, rules changes, recruitment campaigns, increased recognition for contributions, and other means;
- Increase support for self-represented litigants through development of judicial bench books, expanded judicial involvement, training for court clerks, self-help centers and materials, online forms, clinics,



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facilitation of discrete-task representation, and other methods;

- Increase collaboration and coordination among legal aid providers and, as appropriate, promote the creation of new providers to move toward ensuring that all low-income people in the state have access to needed civil legal assistance;
- Address related issues, such as student loan repayment for public interest lawyers, administrative fairness, and challenges faced in the legal context by people with limited English proficiency.

Access to justice commissions have had major successes in a relatively short time—in just over two years in New Mexico, for example, and over the course of a decade in a few states. They are directly or indirectly responsible for many millions of dollars in increased state funding for civil legal aid, as well as new programs for self-represented litigants, expanded pro bono service, improved delivery of legal aid, creation of new student loan repayment programs, and an increased awareness of the legal needs of low-income people.

The access to justice commission model is rooted in the 1990s. At the beginning of the decade, civil legal assistance programs in a growing number of states were increasing their engagement with the judiciary and the organized bar on a statewide basis. In Washington state, the supreme court formalized those relationships by creating the Washington Access to Justice Board in May of 1994.¹ State-level judicial and bar engagement with legal assistance programs grew exponentially in the wake of the election of the 104th Congress, when the “Contract with America” called for elimination of federally funded legal aid through the Legal Services Corporation (LSC). Thanks to an enormous advocacy effort, LSC survived, but with funding cut by one-third and new restrictions imposed that made it impossible for federally funded programs to provide a full range of services to a full range of clients.² As a result, a number of states dramati-

cally restructured their legal aid delivery systems in a short time, merging LSC-funded programs and creating new non-LSC-funded programs in order to provide services prohibited for federally funded programs.³

Justices, judges, and bar leaders played a critically important role in these early efforts. In some states, bench and bar support for legal aid was embodied in the creation of new formal structures, including the Maine Justice Action Group, created in 1995, and the California Commission on Access to Justice, created in 1996. Together with the Washington State Access to Justice Board, these are considered the earliest examples of the Access to Justice Commission model. Judicial and bar engagement took other forms in other states, including the creation of supreme court task forces and committees, increased levels of activity by state bar committees, and the creation of dedicated staff positions at state bars.

By the late 1990s, the civil legal aid delivery system itself had undergone a major transition. The earlier system, funded primarily by the federal government and delivered primarily by LSC grantees, had been replaced by a system funded in many states largely with non-LSC funds and delivered both by LSC grantees and by other entities.⁴ Advocates continued—and will continue—to press for increased federal funding and removal of the restrictions on LSC-funded programs. As more Americans fell into poverty however, it became clear that states simply would have to assume more responsibility for expanding and improving civil legal aid to their low-income citizens.

Some states have been very effective in obtaining state, local, private, and non-LSC federal funding to build on their LSC funding. Many others have very little funding beyond that provided by LSC. As a result, the level of civil legal assistance available varies widely from state to state. The highest-funded states consistently have four to five times the per-capita funding level of the lowest-funded states. Yet, even in

the highest-funded states, the civil legal aid system falls far short of meeting the need and demand for its services.⁵

Another 1990s phenomenon that related to the development of state access to justice commissions was the extraordinarily rapid increase in the number of low-income self-represented litigants in American’s courts and the birth of a national support network—individualized in the states—undertaking massive efforts to provide help for litigants who cannot afford lawyers.⁶ A number of state supreme courts created commissions or task forces to consider how to respond to the crisis. Inevitably, in the course of their deliberations, these entities were required to confront the need for increased funding for civil legal assistance and self-help programs, as well as increased pro bono service. In some states, a pro se task force was a precursor to the creation of an access to justice commission; in others, a pro se task force and an access to justice commission existed on separate, but coordinated tracks.

As the new millennium arrived, the need for action at the state level to address the crisis in access to civil justice was clear and inescapable. The beginning of the current phase of the development of the access to justice commission model can best be dated to 2000. In that year, the Texas Supreme Court held a hearing on the status of civil legal aid in the state. Following the hearing, and with assistance from representatives of the Washington Access to Justice Board, state leaders developed a proposal for an access to justice commission. The Texas State Bar approved the proposal and the Texas Supreme Court adopted it in 2001.⁷

The Texas Access to Justice Commission model attracted the attention of leaders of the burgeoning access to justice coalitions in a number of states. Similar commissions were created, with various modifications, by Colorado and Arkansas (2003); New Mexico (2004); the District of Columbia, Georgia, Massachusetts, Minnesota, and North Carolina (2005); Mississippi and Nevada (2006); Alabama,

New Hampshire, South Carolina, and Utah (2007); and Maryland and Hawaii (2008). Proposals for new commissions are currently pending in West Virginia and Wisconsin.

Notwithstanding the strong national trend toward creating state access to justice commissions, other effective approaches exist. Vermont's Access to Justice Coalition consists of key representatives of the Vermont Supreme Court, Bar Association, Bar Foundation, and legal aid providers, working together in a less formal group. The New York court system has its own office dedicated to access to justice initiatives under the direction of the Deputy Chief Administrative Judge for Justice Initiatives. In a number of other states, there is an effective supreme court committee, judicial task force, bar committee, or informal network involving the judiciary, the bar, and others in expanding access to civil justice.

In 2005, the ABA's then-president, Michael S. Greco, a long-time supporter of civil legal assistance, created the ABA Presidential Task Force on Access to Civil Justice, chaired by Maine Supreme Court Justice Howard Dana Jr., a former member of the LSC Board and then vice-chair of Maine's Justice Action Group. As a result of the Task Force's work, the ABA House of Delegates adopted a resolution endorsing "Ten Principles for a State System for the Delivery of Civil Legal Aid."⁸ Two principles specifically relate to Access to Justice Commissions and their role. Principle 9 addresses judicial and bar leadership and support:

A state's system for the delivery of civil legal aid achieves the goal if it is supported by an organized bar and judiciary that is providing leadership and participating with legal aid providers, law schools, the executive and legislative branches of government, the private sector and other appropriate stakeholders in ongoing and coordinated efforts to support and facilitate access to justice for all.

Commentary: The organized bar and the courts provide active leadership and support for efforts to expand access to civil justice. Their involve-

ment includes participation with legal aid providers, the executive and legislative branches of government, IOLTA and other state funders, the private sector and other appropriate stakeholders in formal structures and/or specific initiatives dedicated to this goal. State Access to Justice Commissions have proved to be an effective model for institutionalizing bar and judicial leadership and support. The organized bar has a special obligation to provide leadership for efforts to maximize pro bono services.

The Conference of Chief Justices also has "front-burned" access to justice commissions and other improvements in access to justice initiatives. The ABA Resource Center reports on state access to justice activities to the relevant committees at each of the Conference's meetings. In its 2001 Resolution 23, "Leadership to Promote Equal Justice," the Conference officially acknowledged the importance of judicial leadership in ensuring equal access to the justice system and encouraged its members to build

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The commentary to Principle 10, which addresses the need for statewide planning and oversight, notes that goal is met when "[e]ffective communication initiatives are developed to increase public awareness of the availability of and need for legal aid throughout the state."

More recently, in response to a recommendation from the Task Force, and in recognition of the growing needs and importance of state access to justice movements, the ABA expanded two existing projects to create the ABA Resource Center for Access to Justice Initiatives. The Resource Center provides support to state leaders involved in expanding access to civil justice in their states. It maintains a web site, www.ATJsupport.org; convenes the annual National Meeting of State Access to Justice Chairs; and provides technical assistance to state access to justice commissions and to state judicial and bar leaders interested in creating commissions.

partnerships with the bar, legal service providers, and others in their home states to remove impediments to equal access to civil justice.

The principle underlying the access to justice commission model and other access to justice initiatives is simple and straightforward: equal access to civil justice for low-income citizens can be achieved only through ongoing partnerships between the judiciary, the bar, legal aid providers, law schools, the executive and legislative branches of government, and many others. Without access to justice, the constitutional imperative of equal justice can never be attained.

Judicial leadership in these efforts is essential; fortunately, that leadership is stepping forward. Chief Justice Broderick made the case eloquently in his plenary address to the 2008 National Meeting of State Access to Justice Chairs:

The decline in meaningful access to justice is everyone's problem and can only be solved with everyone's help.

Conference of Chief Justices Resolution 23: Leadership to Promote Equal Justice

... BE IT RESOLVED that the Conference acknowledges that judicial leadership and commitment are essential to ensuring equal access to the justice system and to the achievement through nationwide effort of equal justice for all and encourages individual members in their respective states to establish partnerships with state and local bar organizations, legal service providers, and others to:

1. Remove impediments to access to the justice system, including physical, economic, psychological and language barriers; and
2. Develop viable and effective plans, to establish or increase public funding and support for civil legal services for individuals and families who have no meaningful access to the justice system; and
3. Expand the types of assistance available to self-represented litigants, including exploring the role of non-attorneys.

—Adopted January 2001.¹¹

For too long and for too many reasons, too many have remained silent or turned away. It is my firm belief that the public will not long entrust its confidence to a system of justice it often cannot navigate, afford, or understand.

I believe that courts need to speak with a louder voice and that judges, in particular, need to be heard. If those who preside in our courtrooms do not take a

laboring oar on the issue of meaningful access to justice, then we cannot complain when others don't. If as judges we do not press the bar to step up, the courts to change, and the legislative and executive leaders in this country to join us, we will surely fail. Silence is not our friend, nor is it mandated by any ethical code that governs our conduct. We are all free to speak and write on issues affecting the administration of justice and more importantly, it is, in my judgment, our fiduciary obligation to do so. It goes to the very essence of what drew us to public service in the first place.⁹

Stated differently:

Judges hold the U.S. Constitution and state constitutions in their hands. Judges are the final protectors and defenders of the peoples' constitutional rights. We must pick up the equal access/equal justice banner and fight for it. We cannot do it alone, and no one expects us to. But if we do not do it at all, equal civil justice will remain an unfulfilled promise to millions of people. Let's be better than that.¹⁰ ■

Endnotes

1. On the history and current activities of the Washington Access to Justice Board, see the special edition devoted to Access to Justice of the WASH. ST. B. NEWS, May 2008, available at www.wsba.org/media/publications/barnews.

2. These restrictions apply not just to the federal funds, but to all program activities without regard to the source of the funds used. For a detailed discussion of the restrictions, see Alan W. Houseman, *Restrictions By Funders and the Ethical Practice of Law*, 67 *FORDHAM L. REV.* 2187, 2189–2190 (1999).

3. For a history of legal aid in the 1990s, see Alan W. Houseman & Linda E. Perle, *Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States* (2007 ed.), Center for Law and Social Policy, Washington, D.C., available at www.clasp.org.

4. According to data gathered by the ABA Resource Center for Access to Justice Initiatives, in 2007, LSC funds provided a majority of funding in only nine states; LSC provided less than thirty percent of funding in twenty-three states.

5. See Legal Services Corporation, *Documenting the Justice Gap in America: A Report of the Legal Services Corporation*, Sept. 2005. This report described three studies that examine the gap between need and the availability of civil legal aid services and concluded that “there was a significant shortage of civil legal assis-

tance available to low-income Americans.” One examination carefully analyzed the nine studies undertaken over the last five years in individual states about the civil legal problems faced by their low-income residents, examining them for nationally applicable conclusions, as well as comparing the results to the 1994 national study on the subject, the Comprehensive Legal Needs Study conducted by the American Bar Association in 1993 (released in 1994), which remains the most recent national study of the legal needs of low-income Americans. The nine state studies validated the findings of the ABA study. The nine recent state studies demonstrated that less than twenty percent of the legal needs of low-income Americans were being met. A number of state legal needs studies since 2005 have yielded similar results. (The LSC and ABA studies, as well as individual state studies, can be viewed at www.ATJsupport.org under “Documents and Resources.”)

6. Important early work by the National Center for State Courts, the State Justice Institute, the Conference of Chief Justices, the Conference of State Court Administrators, and the American Judicature Society, among others, has resulted in the creation of the Self-Represented Litigation Network, hosted by the National Center for State Courts. See www.selfhelpsupport.org.

7. The Texas Supreme Court order creating the Texas Access to Justice Commission, as well as those from other states creating commissions, are available online from the ABA Resource Center for Access to Justice Initiatives, at www.ATJsupport.org under “Documents and Resources.”

8. Available at www.ATJsupport.org under “Documents and Resources.” The ABA Board of Governors also adopted another recommendation of the Task Force, endorsing a civil right to counsel where basic human needs are at stake.

9. Chief Justice Broderick's remarks are available at www.ATJsupport.org.

10. Montana Chief Justice Karla M. Gray.

11. Complete resolution available at www.ATJsupport.org under “Documents and Resources.”