

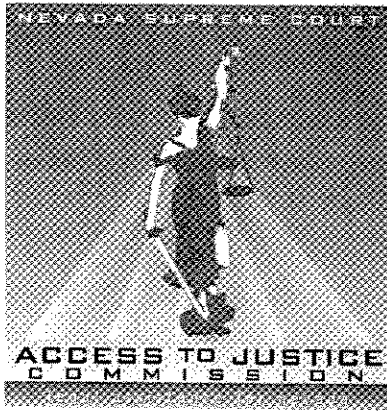
**Access to Justice Commission  
State Bar of Nevada  
State Bar Annual Convention, Santa Barbara  
Friday, June 20, 2008  
11:00 a.m.-2:00 p.m.  
Call in: 1-866-779-0774  
Passcode: \*1043736\***

*Items may be taken out of order at the discretion of the Chairs*

**Opening Comments.**

1. **Approval of minutes 4.25.08**
2. **Commission Documents**
  - a. 2008 Projects and Goals
  - b. ATJ Roster, Standing Committee & Subcommittee lists, organizational chart, Rule 15
3. **Large Law Firm Initiative**
  - a. June Summits
  - b. Action items
    - i. **Mandatory Reporting**
      1. personalized follow-up with large firms
      2. alternative reporting methods (aggregate, pro rata)
    - ii. **Steering Committees**
4. **Civil Legal Needs Assessment**
  - a. Discussion of Assessment results
  - b. Strategic Planning
  - c. Status Report from Tom Warden
5. **IOLTA comparability**
6. **Prioritization of Commission Projects And Goals**
7. **Technology and legal services delivery**
  - a. Report from EJC hearings (Valerie Cooney)
8. **501(c)(3) status. Vote to hold for next meeting.**
9. **Setting Commission meetings for remainder of 2008**
10. **Other business**

**TAB 1**



Nevada Supreme Court  
Access to Justice Commission  
State Bar of Nevada  
600 E. Charleston Blvd.  
Las Vegas, Nevada 89104

**DRAFT MINUTES**  
Friday, April 25, 2008  
10:00 a.m.-1:00 p.m.

**Commission members in attendance:**

Justice Michael Douglas Co-Chair  
Justice James Hardesty Co-Chair

Cooney	Valerie
Dahl,	Hon. Stephen
Elcano	Paul
Ferenbach	Cam
Johnson	AnnaMarie
Mucha-Abbott	Kimberly
Nielsen	Ernest
Thronson	David
Vogel	Sheri Cane
Voy	Hon. William
Warden	Tom

Marzec Kristina Commission Director

**Subcommittee members in attendance:**

Buckley Barbara Executive Director, Clark County Legal Services

**Phone Participants:**

Allf Nancy President, State Bar of Nevada

**Guests:**

Farmer	Kimberly	Executive Director, State Bar of Nevada
Myers	Carolyne	Chair, Nevada Law Foundation
Neuff	Joan	Administrative Office of the Courts
Titus	Ron	Administrative Office of the Courts

**Members unable to attend:**

Desmond	John
Doherty	Hon. Frances
Glasson	Richard
Gonzalez	Hon. Betsy
Kandt	W. Brett

1. Call to order.

A regular meeting of the Nevada Supreme Court Access to Justice Commission convened at the Las Vegas Offices of the State Bar of Nevada on April 25, 2008. The meeting was called to order by Justice Michael Douglas at 10:10 a.m. and new Commission Director Kristina Marzec introduced.

2. Minutes

It was moved, seconded, and approved to ratify the minutes of the February 1, 2008, Commission meeting.

3. Project and goals

Justice Douglas addressed the Commission's 2008 *projects and goals* lists, noting some are follow-up items from last year, and others are new. Momentum is critical for the Commission, building on last year's successes now that the new Director is in place. A consensus on prioritization of the Commission's goals is needed. Today's discussions will be utilized toward that end.

(a) 501(c)(3)

Kristina Marzec provided an update on the status of the 501(c)(3) formation project being handled by Jones Vargas. Justice Douglas and she provided certain pending items to John Sande Jr, who is handling the project along with John Desmond and Elizabeth Fielder. Three items require Commission vote and potential subcommittee action: appointment of officers and the secretary, a stand-alone conflict-of-interest policy, and a position on potential efforts of the Commission to influence legislation.

There followed some discussion about the current IRS policies addressing 501(c)(3) entities, stricter standards, and tighter regulation. Justice Douglas noted this was a topic of discussion at a recent Consumer Credit and Counseling meeting. This item was held over for later in the meeting.

(b) Legal Needs Assessment

The Needs Assessment is on track to be presented in June and finalized by the end of summer.

Kroupa recently provided an invoice to the AOC. The amount went over contract, thus resulting in the AOC applying on the Commission's behalf for an SJI grant. Kimberly Farmer had previously entered into verbal discussions with Gene Kroupa who had indicated a willingness to meet us halfway with the overrun. Mr. Farmer noted once the grant is approved, the Commission should proceed with further negotiations on the overrun balance. Justices Douglas and Hardesty noted it is the Commission's intent to pay for work done.

Kroupa provided an invoice for \$13, 100, for which funds are currently in trust and available for payment by the AOC. It was moved, seconded, and approved that the AOC pay the \$13, 100 ASAP. The AOC was in attendance, represented by Joan Neuffer, Esq., and Ron Titus. The balance will be addressed once the SJI grant status is affirmed, projected for the end of April 2008.

Tom Warden and the Communications Subcommittee remain on board to go forward with a press campaign once the Civil Legal Needs Assessment is finalized.

(c) Cy pres. Justice Douglas noted the Nevada Justice Attorneys group (f/n/a the Nevada Trial Lawyers Association) was critical to this initiative. Ann Price McCarthy is currently handling president duties for that organization and should be contacted. Paul Elcano noted he has been and will continue to take point on this item.

(d) Large law firm initiative.

Justice Hardesty noted he had a very productive interchange with large firms last year. There were dollar commitments, agreements to form subcommittees; motivate other committees; and develop protocols. Those groups should reconvene immediately, and meet no less than twice a year. Summits should be rescheduled in the north and south. Those that attend should put together a list of what was covered and formulate action plans. By all accounts, everyone who attended last year was looking forward to another meeting. Those meetings must happen before the next Commission meeting.

Kimberly Abbott noted she had contact with Tom Ryan about other issues, and people were expecting more, particularly the law firm coordinators. They appreciate having that contact and commitment from the provider side.

Justice Hardesty stated the focus would be how to advance pro bono support, pool resources, advance money commitments, and advance participation commitment. He was approached by mid- and sole-practitioners about future meetings. If we can start channeling younger lawyers, matching up tasks with those lawyers, that will be helpful.

Barbara Buckley stated the top priorities are to get this back on track and clearly identify what the "ask" is going to be: designate a Pro Bono Coordinator, give money, devote time, or all the above.

Justice Douglas noted that Kristina Marzec needs to reach out to the Pro Bono coordinators and get their involvement on the Commission's initiatives. Barbara Buckley commented pooling of pro bono hours is worthy of discussion. There are a small number of lawyers doing the lion's share.

Justice Hardesty opined the "ask" should be that the Board of Governors doesn't want to increase dues, but that doesn't mean large law firms can't be asked. Cam Ferenbach stated he liked the idea of pooling. Justice Hardesty stated large law firms are prepared to give hours and money so the Commission needs to do its work to help them do that. The goal is to make sure there is a net gain.

4. Legal Services Standing Committee items

(a) The Emeritus ADKT 425 is filed.

(b) Ghostwriting opinion. This is tabled for now. The Legal Services Providers should address this at the next executive meeting.

(c) Judge Dahl noted the Professionalism Summit did not address Pro Bono. It was agreed this will be followed-up with those responsible for the Summit in 2009.

5. Lawyers Helping Homeowners.

Joan Neuffer, attorney for the AOC, did a power-point presentation on Lawyers Helping Home Owners. Arizona and Ohio recently launched programs which were of interest to the AOC as a potential aid to Nevadans caught in the mortgage crisis. The Commission discussed the program, its potential in Nevada, and decided that other states' progress should be monitored before already stretched resources are devoted in Nevada.

A number of potential legislative approaches were also identified, such as giving the justice courts authority to review foreclosure cases and hear all defenses. Justice Hardesty noted that also applies to eviction issues. People have appellate rights in the district court, but then end with a bifurcated system on these types of cases.

6. Rural Services Delivery

Paul Elcano reported on the status of this item. He discussed the jurisdiction and resources of Nevada Legal Services and VARN and identified the framing issues to be: what services are being delivered, by whom, how those services are funded, and balancing quality of those services with the resources at hand. He also discussed Legal Services Corporation and how strictly services must be regulated to retain funding.

The discussions about VARN and Washoe Legal Services potentially joining up to come under the umbrella of Washoe Legal Service to provide service in the rurals was also addressed.

Valerie Cooney noted district court judges have a better view of the services provided than does limited jurisdiction courts. VARN does not provide overlap services in the rurals. VARN's pro bono project really services 5 counties, all close to Carson. A different model is needed for rural service delivery. The Domestic Violence assistance project is handled by VARN exclusively. NLS was active in Elko county for at least 20 years. VARN is looking into contracting with NLS to provide DV service in Elko. There is not an overlap, but rather truly a dearth in services for many areas of need.

AnnaMarie Thompson noted NLS mostly does family law. She has 9 attorneys for the whole state. In 2007, 1800 people were serviced, but NLS only appeared in court two times each in Esmerelda and Elko. They spend a great deal of time giving legal information and advice.

Valerie Cooney noted discussions about merging were very preliminary because they have to be cognizant of administrative costs. Quality of service delivered in a meaningful way is critical. Other vehicles in other areas don't translate well to this specialized area.

Justice Douglas wrapped up by stating a letter was written to judges, Barbara Buckley is speaking at the upcoming judicial summit, and Justice Gibbons filed ADKT 424 addressing use of electronic media to access the courts. The providers were requested to contact John McCormick to use the Regional Judicial Council to follow up on this item. The providers were also asked for a list of what services were provided in each of the counties, and how much annual filing fees each is receiving.

7. Nevada Law Foundation

Carolyn Myers gave a report on the information she learned at the IOLTA National meeting. She noted Alberta Canada collected 55 million; Manetoba 20 million; and Ontario 35 million. Florida collected 72 million and California 12 million.

Nevada is in the bottom lower third and we do have long way to go, but some of the things we are doing, are as well as could be expected. NLF will develop reserve fund policy within the next month. The Foundation hopes mandatory IOLTA will be very helpful but it is too early to tell. The most important goal right now is maximizing banking yields.

Paul Elcano gave a detailed report on the efforts of the banking subcommittee and discussions with local banks on potential avenues to raise IOLTA revenue yields. After discussion, Justice Douglas directed this item be put forth on the Large Law Firm agendas for additional development. The Board of Governors also needs to be involved and fully vet this issue.

Justice Hardesty noted SCR 78.5 is already in place to provide a mechanism for the State Bar to approve trust account banks and set forth attendant policies related thereto. Specifically, this initiative might not require a major change but rather a small tweak to existing rules.

Carolyn Myers stated Nevada Law Foundation very much wants to be equal partners in this and be an open book to the Commission. She requested that the Commission approve NLF going forward with Succession Planning in light of the substantial upcoming Board turnover.

Justice Hardesty noted his support of this approach. If NLF is able to function as an investment and fundraising arm of the Commission, it is not necessary to devote resources to 501(c)(3) issues.

Justice Hardesty moved that the Commission hold on the non-profit formation while it explores its forward relationship with NLF. Seconded and approved. Nevada Law Foundation may proceed with Succession Planning and report back to the Commission

8. Bar Dues Check-off

Whereas the Washoe and Eighth Judicial District Pro Bono Foundations are no longer active, Kimberly Farmer requested that the Commission verify the allocation of percentages of Bar Dues check-off funds under RPC 6.1(a)(3)(ii) as follows:

Rural counties: 100% to Volunteer Assistance for Rural Nevadans

North counties: 50% to Washoe Legal Services  
25% to Senior Law Project  
25% to Nevada Legal Services

Southern counties: 50% Clark County Legal Services\*  
25% City of Las Vegas Senior Law Project  
25% Nevada Legal Services

\*Noted that CCLS receives 50% because it comprises both Clark County Pro Bono Project and Clark County Legal Services.

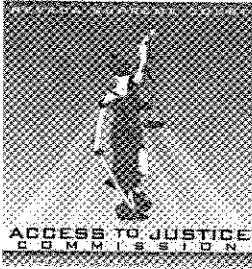
9. Other Business.

The next meeting of the Commission will be held at the State Bar annual convention in June 2008 in Santa Barbara, California. The meeting adjourned at 1 p.m.

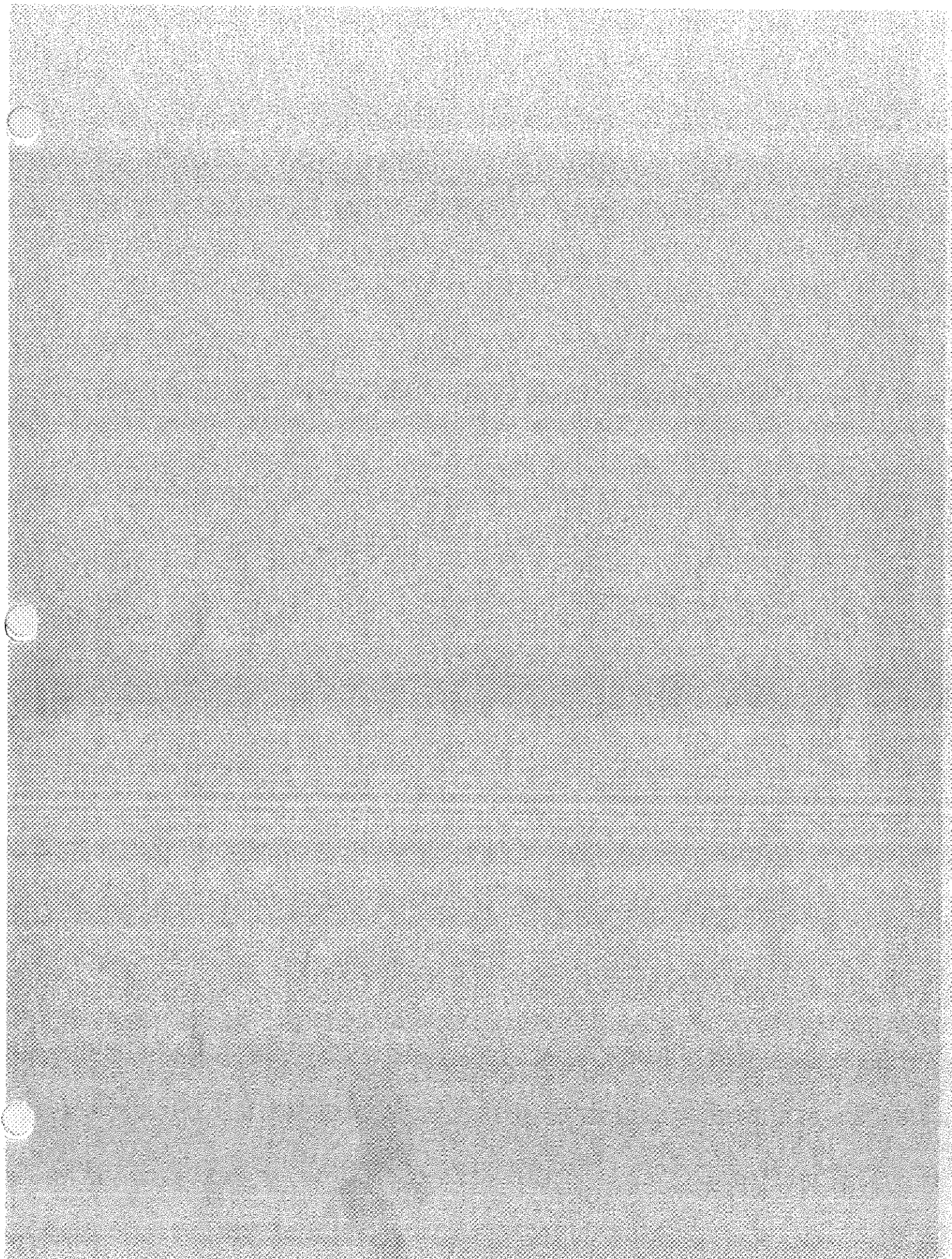
**TAB 2**



## 2008 PROGRAMS AND PROJECTS ACCESS TO JUSTICE COMMISSION



- **501 (C) 3.** Complete application process and finalize
  - Develop conflict policy and scope of lobbying/legislative activities
- **ATJC PR efforts.**
- **Attorney recognition programs.** In particular continue to develop recognition for northern members, research and develop state-wide program(s)
- **Cy Pres funding.**
- **Delivery/Performance Standards for provision of civil legal aid services.**
- **Emeritus Attorney Program.** Once enacted, implement operating rules and develop comprehensive plan to solicit participation. Tap eligible out of state attorney resources.
- **Ghostwriting.** Response due to the Ethics & Prof. Resp. Committee Oct. 2008
- **IOLTA Comparability.** Develop relationships with Nevada banks to enforce Nevada SCR 217 (competitive rates). See California & Texas implementation process of similar rule.
- **Jury fees – NRS 355.210.**
- **Large law firm initiative.** Move forward, short term goal meetings in the North and South.
- **Legal Needs Assessment.** Finish in June, complete and implement strategic plan, advertise findings, apply findings to goal projects
- **Loan repayment assistance program.**
- **NLF and the ATJC.** Continue to define and develop the future relationship between NLF and the ATJC; discuss potential rule changes and investment strategies; identify best use of available resources
- **Rule Changes.** Eg. IOLTA/NLF/Unbundled & other legal services delivery
- **Public Interest Lecture Series.** Continue efforts to add and expand, consider new audiences and resources. Define goals and objectives of the series.
- **Rural legal services delivery**
- **Statewide fundraising.** Catalogue planned events, identify new resources
- **Website.** Director to expand SBN website to function as resource center for both the ATJC and the public



Access to Justice Commission  
May 2008

Last	First	Title	Position	Firm	Phone	Email
Abbott	Kimberly		Pro Bono Project Director	Clark County Legal Services	702-386-1070	kmucha@clarkcountylegal.com
Thronson	David	Professor		UNLV Boyd Law School	702-895-2080	David.thronson@unlv.edu
Cooney	Valerie		Executive Director	Volunteer Attorneys for Rural Nevadans	775-883-8278	vcooney@vavn.org
Dahl	Stephen	Hon.		Justice Court, North Las Vegas Township	702-455-7804	dahlst@co.clark.nv.us
Desmond	John			Jones Vargas	775-786-5000	jd@jonesvargas.com
Doherty	Frances	Hon.		Second Judicial District Court	775-328-3470	frances.doherty@washocourts.us
Douglas	Michael	Justice		Supreme Court of Nevada	702-486-3205	mdouglas@nvcourts.nv.gov
Elcano	Paul		Executive Director	Washoe Legal Services	775-287-0329	pelcano@ashoelegalservices.org
Goff						
Gonzalez	Betsy	Hon.		Eighth Judicial District Court	702-671-4378	gonzale@co.clark.nv.us
Ferenbach	Cam		State Bar of Nevada, Board of Governors	Lionel, Sawyer & Collins	702-383-8888	cferenbach@lionelsawyer.com
Hardesty	James	Justice		Supreme Court of Nevada	775-684-1590	jhardesty@nvcourts.nv.gov
Kandt	W. Brett			Nevada Dept. of Justice	775-688-1966	wbkandt@ag.state.nv.us
Nielsen	Ernest			Washoe Co. Senior Law Project	775-328-2592	enielsen@washocounty.us
Johnson	Anna Marie		Executive Director	Nevada Legal Services	800-323-8666	ajohnson@nlslaw.net
Puccinelli	Andrew	Hon.		Fourth Judicial District Court	775-753-4602	apuccinelli@elkocountynv.net
Steinheimer	Connie	Hon.		Second Judicial District Court	775-328-3183	judge.steinheimer@washocourt.us
Vogel	Sheri Cane		Executive Director	Senior Citizens Law Project	702-29-6644	svogel@lasvegasnevada.gov
Voy	William	Hon.		Eighth Judicial District Court	702-455-5990	JensenL@clarkcountycourts.us
Warden	Tom		Vice President, Community & Government Relations	The Howard Hughes Corporation	702-791-4267	twarden@ggp.com
Marzec	Kristina		Director	State Bar of Nevada	702-382-2200 702-317-1404	kristinam@nvbar.org

NEVADA SUPREME COURT ACCESS TO JUSTICE  
STANDING COMMITTEES

**COMMUNICATIONS**

**David Thronson**  
**Judge Dahl**  
**Judge Gonzalez**  
**Brett Kandt**  
**Judge Glasson**  
**Judge Doherty**  
Christine Smith  
William Heavilin  
Trevor Hayes  
Cassandra Chapdelaine

**Current projects:**

Legal Needs Assessment; Public interest lecture series;  
Loan Assistance Repayment (development);  
Mandatory Pro Bono Reporting results; Fellowships

**DEVELOPMENT**

**Ernie Nielsen**  
**Paul Elcano**  
**Valerie Cooney**  
**Judge Voy**  
**Wayne Pressel**  
**Cam Ferenbach**  
**Tom Warden**  
Terry Bratton  
Suzy Baucum  
Nancy Becker

**Current projects:**

IOLTA; Loan Assistance Repayment (funding); NRS 355.210;  
Cy Pres

**FUND DISTRIBUTION**

TBD

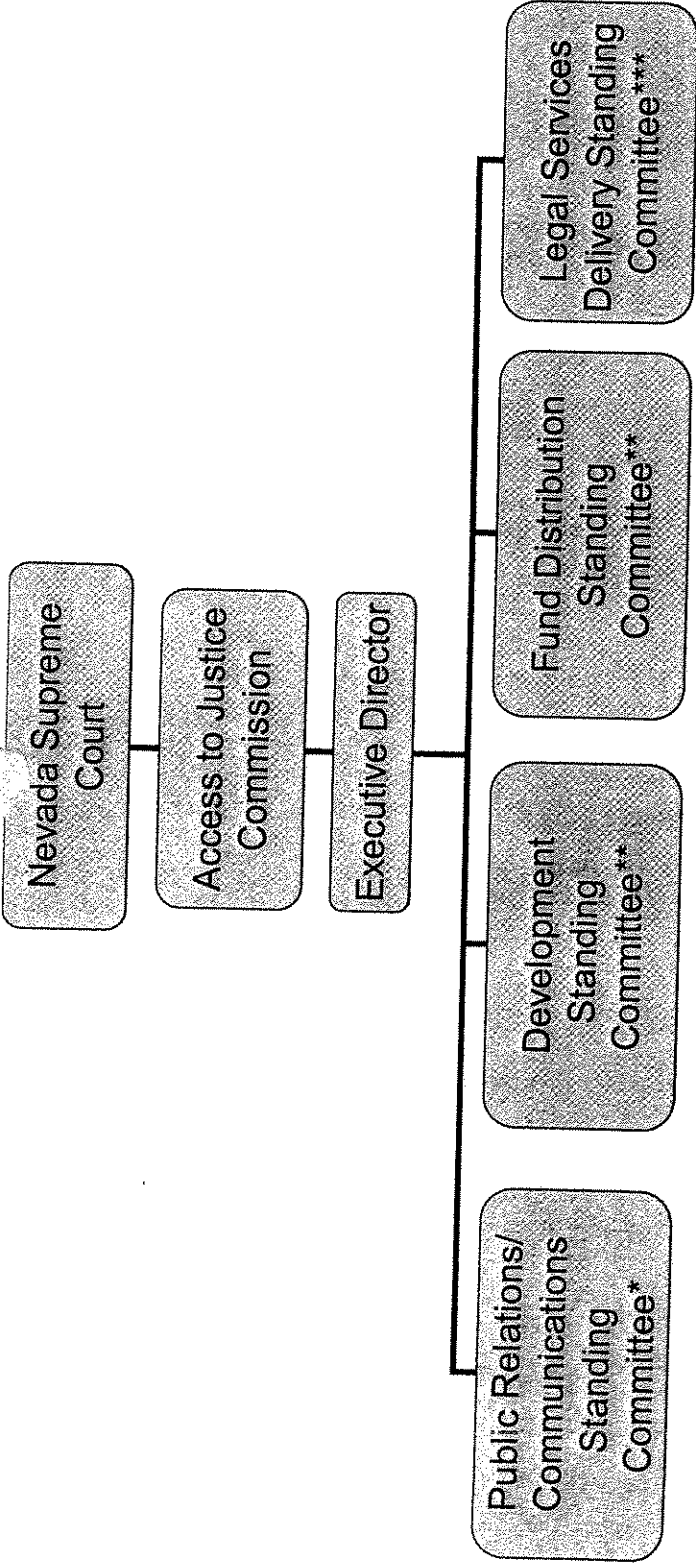
**LEGAL SERVICES DELIVERY**

**Paul Elcano (ED)**  
**Sugar Vogel (ED)**  
**John Desmond**  
**Kimberly Abbott**  
**Judge Steinheimer**  
**AnnaMarie Johnson (ED)**  
**Ernie Nielsen (ED)**  
**Valerie Cooney (ED)**  
**Judge Puccinelli**  
Barbara Buckley (ED)  
Odessa Ramirez  
Renee Kelly  
Kendal Sue Bird  
Christopher Reade  
Megan Sackstedar  
Beth Cannon-Lynch  
Karen Palmer

**Current projects:**

Large Law Firm Initiative; Emeritus Program;  
Pro Bono Attorney Recognition; Self Help

**\*\*Bold = Current ATJ Commission members.**



Responsible for:

- Media Contacts
- Promoting Commission Activities
- Promoting Needs Assessment
- Promoting Mandatory Reporting
- Using methods such as website, newsletter and press releases
- Working with county bar associations

Responsible for:

- Legislative initiatives
- New IOLTA initiatives
- New funding sources

Responsible for:

- Creation and development of distribution formula for funds based on legal needs study.
- Distribution of funds through newly created 501(c)(3)
- Continuing distribution of pro bono opt-out funds

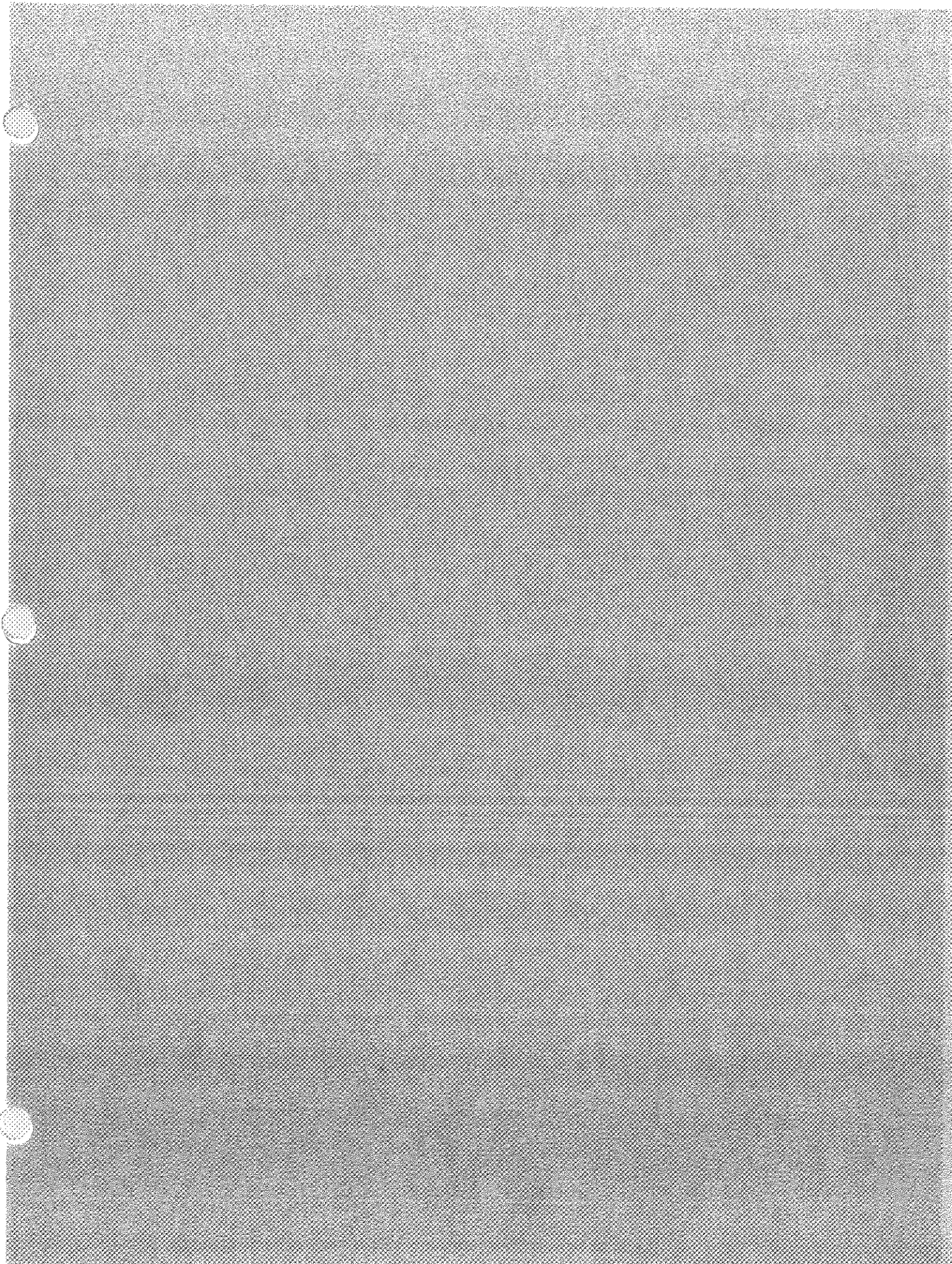
Responsible for:

- Developing statewide policies designed to support and improve the delivery of legal services including pro bono and self help programs
- Recruitment and recognition of pro bono attorneys
- Improving services for pro se litigants

\*Standing Committee will be comprised of at least one representative from the North and South.

\*\*Standing Committee will be comprised of a representative from the North, South and the Rurals.

\*\*\*Standing Committee will be comprised of 7 members including all 5 Executive Directors.



## RULE 15 OF THE NEVADA SUPREME COURT\*

“This court agrees with the petition’s allegations regarding the importance of access to justice in a democratic society; the lack of sufficient access to justice for thousands of Nevada citizens of limited means despite the efforts of numerous public and private organizations, attorneys, and other individuals, the critical need for statewide strategic planning and coordination of efforts to expand services and impose access to justice; and the effectiveness of supreme court commissions on access to justice created in other jurisdictions to respond to similar challenges...”

### **PURPOSE OF THE ACCESS TO JUSTICE COMMISSION**

- 1) Assess current and future needs for civil legal services for persons of limited means in Nevada.
- 2) Develop statewide policies designed to support and improve the delivery of legal services.
- 3) Improve self-help services and opportunities for proper person litigants and increase pro bono activities.
- 4) Develop programs to increase public awareness of the impact that limited access to justice has on other government services and on society.
- 5) Investigate the availability of and pursue increased public and private financing to support legal services organizations and other efforts to provide legal services to persons of limited means.
- 6) Recommend legislation or rules affecting access to justice to the Supreme Court.

\*condensed

**IN THE SUPREME COURT OF THE  
STATE OF NEVADA**

IN THE MATTER OF THE CREATION OF THE NEVADA SUPREME COURT  
ACCESS TO JUSTICE COMMISSION.

ADKT 394

**ORDER CREATING THE NEVADA SUPREME COURT ACCESS TO  
JUSTICE COMMISSION AND ADOPTING RULE 15 OF THE  
SUPREME COURT RULES**

WHEREAS, the Honorable Robert E. Rose, Chief Justice of the Nevada Supreme Court, and the Honorable Nancy A. Becker, Justice of the Nevada Supreme Court, have petitioned this court on its administrative docket to adopt a rule creating the Nevada Supreme Court Commission on Access to Justice; and

WHEREAS, this court agrees with the petition's allegations regarding the importance of access to justice in a democratic society; the lack of sufficient access to justice for thousands of Nevada citizens of limited means despite the efforts of numerous public and private organizations, attorneys, and other individuals; the critical need for statewide strategic planning and coordination of efforts to expand services and improve access to justice; and the effectiveness of supreme court commissions on access to justice created in other jurisdictions to respond to similar challenges; and

WHEREAS, it therefore appears to this court that amendment of the Supreme Court Rules is warranted to establish a permanent Supreme Court Commission on Access to Justice; accordingly,

IT IS HEREBY ORDERED that new Rule 15 of the Supreme Court Rules shall be adopted and shall read as set forth in Exhibit A.

IT IS FURTHER ORDERED that this new rule shall be effective immediately. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dis-



semination of this order shall be conclusive evidence of the adoption and publication of the foregoing rule amendment.

Dated this 15th day of June, 2006.

BY THE COURT

ROBERT E. ROSE, *Chief Justice*

NANCY A. BECKER  
*Associate Justice*

A. WILLIAM MAUPIN  
*Associate Justice*

MARK GIBBONS  
*Associate Justice*

MICHAEL L. DOUGLAS  
*Associate Justice*

JAMES W. HARDESTY  
*Associate Justice*

RON D. PARRAGUIRRE  
*Associate Justice*

## EXHIBIT A

### NEW RULE 15 OF THE SUPREME COURT RULES

#### **Rule 15. Commission on Access to Justice.**

**1. Creation, purpose.** *The supreme court shall appoint a commission on access to justice. The commission shall:*

(a) *Assess current and future needs for civil legal services for persons of limited means in Nevada.*

(b) *Develop statewide policies designed to support and improve the delivery of legal services.*

(c) *Improve self-help services and opportunities for proper person litigants and increase pro bono activities.*

(d) *Develop programs to increase public awareness of the impact that limited access to justice has on other government services and on society.*

(e) *Investigate the availability of and pursue increased public and private financing to support legal services organizations and other efforts to provide legal services to persons of limited means.*

(f) *Recommend legislation or rules affecting access to justice to the supreme court.*

**2. Composition.** *The access to justice commission shall be composed of the chief justice of the supreme court or the chief justice's designate and the following members, to be appointed by the supreme court to four-year terms:*

(a) *One district judge each from the Second and the Eighth Judicial District Courts. At least one of those judges must be assigned to the family division of the district court.*

(b) *One additional district judge to be selected from the First, Third, Fourth, Fifth, Sixth, Seventh, or Ninth Judicial District Courts.*

(c) *One limited jurisdiction judge, who shall serve as liaison to the Nevada Judges Association.*

(d) *One representative designated by the Nevada Attorney General.*

(e) *One representative each from the City of Las Vegas Senior Citizens Law Project, Clark County Legal Services/Pro Bono Project, the Eighth Judicial District Pro Bono Foundation, Nevada Legal Services, Volunteer Attorneys for Rural Nevadans/Domestic Violence Project, the Washoe Access to Justice Foundation, the Washoe County Senior Law Project, and Washoe Legal Services/Pro Bono Project.*

(f) *One representative each from the Clark County Bar Association, the State Bar of Nevada, and the Washoe County Bar Association.*

(g) *One representative from the clinical program at the William S. Boyd School of Law of the University of Nevada, Las Vegas.*

(h) *Two persons who are not members of the legal profession.*

*The commission may appoint nonvoting members, including, but not limited to, judges and representatives from other direct service providers, county bar associations, and neighborhood pro bono projects.*

*3. Meetings. The commission shall meet at least semi-annually and shall have additional meetings, as the commission deems appropriate. The commission may form separate subcommittees to address specific issues.*

H

## RULE 15 OF THE NEVADA SUPREME COURT\*

“This court agrees with the petition’s allegations regarding the importance of access to justice in a democratic society; the lack of sufficient access to justice for thousands of Nevada citizens of limited means despite the efforts of numerous public and private organizations, attorneys, and other individuals, the critical need for statewide strategic planning and coordination of efforts to expand services and impose access to justice; and the effectiveness of supreme court commissions on access to justice created in other jurisdictions to respond to similar challenges...”

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# IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CREATION OF THE NEVADA SUPREME COURT  
ACCESS TO JUSTICE COMMISSION.

ADKT 394

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IT IS HEREBY ORDERED that new Rule 15 of the Supreme Court Rules shall be adopted and shall read as set forth in Exhibit A.

IT IS FURTHER ORDERED that this new rule shall be effective immediately. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dis-

semination of this order shall be conclusive evidence of the adoption and publication of the foregoing rule amendment.

Dated this 15th day of June, 2006.

BY THE COURT

ROBERT E. ROSE, *Chief Justice*

NANCY A. BECKER  
*Associate Justice*

A. WILLIAM MAUPIN  
*Associate Justice*

MARK GIBBONS  
*Associate Justice*

MICHAEL L. DOUGLAS  
*Associate Justice*

JAMES W. HARDESTY  
*Associate Justice*

RON D. PARRAGUIRRE  
*Associate Justice*

## EXHIBIT A

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**Rule 15. Commission on Access to Justice.**

**1. Creation, purpose.** *The supreme court shall appoint a commission on access to justice. The commission shall:*

(a) *Assess current and future needs for civil legal services for persons of limited means in Nevada.*

(b) *Develop statewide policies designed to support and improve the delivery of legal services.*

(c) *Improve self-help services and opportunities for proper person litigants and increase pro bono activities.*

(d) *Develop programs to increase public awareness of the impact that limited access to justice has on other government services and on society.*

(e) *Investigate the availability of and pursue increased public and private financing to support legal services organizations and other efforts to provide legal services to persons of limited means.*

(f) *Recommend legislation or rules affecting access to justice to the supreme court.*

**2. Composition.** *The access to justice commission shall be composed of the chief justice of the supreme court or the chief justice's designate and the following members, to be appointed by the supreme court to four-year terms:*

(a) *One district judge each from the Second and the Eighth Judicial District Courts. At least one of those judges must be assigned to the family division of the district court.*

(b) *One additional district judge to be selected from the First, Third, Fourth, Fifth, Sixth, Seventh, or Ninth Judicial District Courts.*

(c) *One limited jurisdiction judge, who shall serve as liaison to the Nevada Judges Association.*

(d) *One representative designated by the Nevada Attorney General.*

(e) *One representative each from the City of Las Vegas Senior Citizens Law Project, Clark County Legal Services/Pro Bono Project, the Eighth Judicial District Pro Bono Foundation, Nevada Legal Services, Volunteer Attorneys for Rural Nevadans/Domestic Violence Project, the Washoe Access to Justice Foundation, the Washoe County Senior Law Project, and Washoe Legal Services/Pro Bono Project.*

(f) *One representative each from the Clark County Bar Association, the State Bar of Nevada, and the Washoe County Bar Association.*

(g) *One representative from the clinical program at the William S. Boyd School of Law of the University of Nevada, Las Vegas.*

(h) *Two persons who are not members of the legal profession.*

*The commission may appoint nonvoting members, including, but not limited to, judges and representatives from other direct service providers, county bar associations, and neighborhood pro bono projects.*

*3. Meetings. The commission shall meet at least semi-annually and shall have additional meetings, as the commission deems appropriate. The commission may form separate subcommittees to address specific issues.*

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**TAB 3**



ACCESS TO JUSTICE COMMISSION  
LARGE LAW FIRM INITIATIVE  
June 11, 2008. Las Vegas, Nevada  
PRO BONO SUMMIT QUESTIONNAIRE

Name: \_\_\_\_\_ Firm: \_\_\_\_\_

1. Does your firm have a *pro bono* coordinator?  Yes  No

If yes, who? \_\_\_\_\_ If no, are you willing to designate one?  Yes  No

2. Has your firm adopted a written *pro bono* policy?  Yes  No If yes, please attach.

If no, will your firm pledge to adopt one within the next 6 months?  Yes  No

3. Is your firm multi-jurisdictional?  Yes  No (If no, proceed to number 4)

If headquartered out-of-state, where? \_\_\_\_\_

Does your firm have a trust account in a Nevada bank?  Yes  No

If no, does your firm plan on opening one now?  Yes  No

4. My firm already pledged to participate in a *Pro Bono* steering Committee  Yes  No

5. My firm is willing to participate in a *Pro Bono* steering Committee and the designee(s) is:

6. RPC 6.1 *Pro Bono* Pledges. Your firm agrees to:

a. Accept \_\_\_ pro bono cases from a legal service provider in the next 6 months.

Indicate types of legal matters you can accept: \_\_\_\_\_

b. Monetary contributions.

Donate \$ \_\_\_\_\_ to \_\_\_\_\_ (list legal service provider(s))

\_\_\_\_\_ # lawyers will give \$500 each under RPC 6.1(a)(3)(ii) (Bar dues check-off)

c. Public education

Cover \_\_\_ shifts (w/in 6 months from now) at a legal clinic such as:

*Ask-a-lawyer (LV), Lawyer in the Library (Reno), Bankruptcy Facilitator Program (LV),  
Bankruptcy Clinic (Reno)*

7.  Yes  No Please have a  Commission Member  Legal Service Provider Attorney  
arrange to speak to our firm about *pro bono* opportunities.

8.  Yes  No Please have a Legal Services Provider arrange to do in-house training in  
the following areas:

\_\_\_ Immigration \_\_\_ Predatory Lending \_\_\_ Abuse/Neglect \_\_\_ Family Law/Domestic Violence

9.  Yes  No Please have a Legal Service Provider contact our Pro Bono Coordinator

Please return this form no later than June 30 to Kristina Marzec, Director, ATJ Commission

Fax: (702) 385-2045 E-mail [Kristinam@nvbar.org](mailto:Kristinam@nvbar.org) or mail to either State Bar Office



Access to Justice Commission  
LARGE LAW FIRM INITIATIVE  
PRO BONO SUMMIT-Las Vegas



June 11, 2008 at 3:30 p.m.  
Regional Justice Center

Attendance sheet

Ballard Spahr Andrews & Ingersoll \_\_\_\_\_

**Gordon & Silver**

Tom Fell  
~~Karla Kok~~

**Jones Vargas**

John Desmond (ATJC)  
R. Douglas Kurdziel

**Lewis & Rocha**

John Krieger ✓

**Lionel, Sawyer & Collins**

Cam Ferenbach (ATJC) ✓  
Paul Hejmanowski ✓

**Marquis & Aurbach**

Terry Moore ✓  
Terry Coffing

**Reade & Associates**

Chris Reade (ATJC)

**Santoro, Driggs, Walch et al.**

Ronald Thompson  
Bryce Earl

**Snell & Wilmer**

Jonathan Hicks ✓  
Chad Fears ✓

**Access to Justice Commission:**

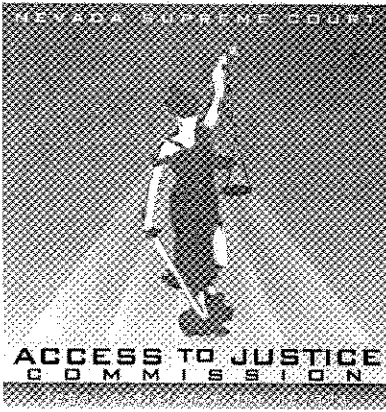
Bratton, Terry  
Mucha Abbott, Kimberly  
Johnson-Thompson, Anna ✓  
Thronson, David  
Vogel, Sugar (Carol Kingum)

Lawyer:

Firm:

\_\_\_\_\_  
George Ogilvie  
\_\_\_\_\_  
Joshua Reisman  
\_\_\_\_\_  
John Krieger  
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Ballard Spahr  
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Access to Justice Commission  
State Bar of Nevada

LARGE LAW FIRM INITIATIVE  
PRO BONO SUMMIT-Reno

June 4, 2008 at 3:30 p.m.

Northern Nevada Bar Center

**Attendance sheet**

Beesley, Bruce *Lewis & Rocha*

Flaherty, Frank *Dyer Lawrence*

Knox, Michael *Lionel Sawyer Collins*

Penrose, Jim *Dyer Lawrence*

Smith, Christine *Lionel Sawyer Collins*

Wilt, Allen *Lionel Sawyer Collins*

Knox, Michael *Lionel Sawyer Collins*

Lawyer:

Firm:

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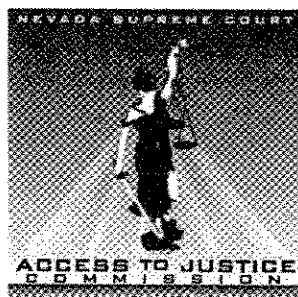
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**TAB 4**

# The Supreme Court of Nevada Access to Justice Commission



## 2008

# Summary of the Civil Legal Needs Assessment

A report on Access to Justice and meeting unmet civil legal  
needs in Nevada

Report Prepared by  
Social Entrepreneurs, Inc.  
6121 Lakeside Drive, Suite 160, Reno, NV, 89511  
Phone: (775) 324-4567 • Internet: [www.socialent.com](http://www.socialent.com)



## Report Summary

The Supreme Court of Nevada created a permanent Access to Justice Commission (ATJC) in August 2006. The Commission is supported by a Director who is employed by the State Bar of Nevada. In 2007, Nevada became one of many states to endeavor to assess the needs of residents related to access to justice. To accomplish this, the Supreme Court of Nevada Access to Justice Commission contracted for three projects as part of a statewide assessment of the civil legal needs of low and moderate income residents.

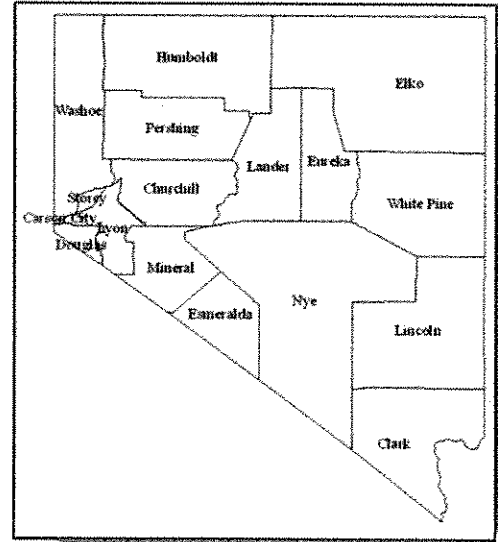
The Supreme Court of Nevada Access to Justice Commission contracted for a telephone survey, a needs assessment, and strategic planning as part of a statewide assessment of the civil legal needs of low and moderate income residents. In March 2008, "Nevada Civil Legal Needs Survey" was published by Gene Kroupa & Associates, LLC (GKA), a research firm retained by the ATJC to survey 1,000 statewide residents from targeted geographic regions and analyze the results. The survey was conducted in November 2007 and covers solely the civil legal needs of Nevadans.

The second project was to use the survey results to further delve into the civil legal needs of Nevadans through research, interviews and analysis. Following receipt of the telephone survey results from the State Bar of Nevada, Social Entrepreneurs, Inc. (SEI) a management consulting firm was contracted with for the remaining projects. SEI conducted targeted research to complete the needs assessment. Research included demographic and situational characteristics of low-income residents in Nevada, accessing data from Clark and Washoe Counties, Carson City, the State demographer, the US Census and existing reports. Data was also provided by the State Bar of Nevada, Legal Service Corporation (LSC) providers, non-LSC providers, and other service providers including Nevada 2-1-1. Providers were issued a questionnaire that asked for information including services provided and eligibility requirements. Websites and program publications were also used to better understand the service delivery system. This report summary is the result of that research and will serve as a resource during the third and final project, strategic planning to be completed in summer 2008.

Failure to provide equal access to justice has significant social and economic implications for Nevada. While it is largely accepted that access to justice is a public responsibility, it also requires a commitment of resources. In Nevada, those resources are woefully inadequate.

The lack of investment in providing access to justice costs all citizens both economically and socially in the long term.

The telephone survey showed that,



- “20% of those with one or more legal problems received help from a lawyer for at least one but not all of the legal problems they identified. Many of those who asked for help did not receive help from a lawyer.”
- The telephone survey indicated that, “over two-thirds of low to moderately low income households experience significant civil legal problems that would ordinarily require at least some assistance from an attorney in order to resolve them.”

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*Throughout the state providers noted that they would like to advertise but they can't meet current needs let alone increased needs without more staff to back up the system and manage intakes and interviews. They fear being deluged by new clients when they can't serve current needs.*

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A number of factors impact the gaps and priorities for Nevada and many correspond with the telephone survey results. They include:

- Nevada’s geographic expanse with rural, urban and frontier counties poses a challenge in providing legal aid as it is expensive to maintain offices in locations with small population centers,
- Nevada’s population growth over the past 10 years, coupled with a dramatic shift in the demographics of Nevada’s residents impacts service delivery. With more seniors including those ages 75 and over, a growing immigrant population, and a growing number of homeless individuals and families, the demand on the legal system will only continue to increase,
- Nevadans in search of assistance, particularly in the area of family law continues to grow. Only a small portion of these cases have legal representation.

Generally, anyone unable to pay for an attorney must navigate the legal system on their own. This affects both the quality of the justice they achieve and the ability of the court personnel to provide services in a timely manner. Key informant interviews and focus groups provided considerable context for understanding how an insufficient civil justice system is experienced on a day to day basis.

- Participants described Nevada's civil legal system one with insufficient resources with pockets of unmet need.
- Because of the scarcity of resources, there are groups of individuals experiencing a lack of access either due to their geographic location, not meeting eligibility requirements or because no funding is available to serve a particular type of legal need. Providers funded by the Legal Service Corporation (LSC), have different funding requirements, mandates and priorities in providing civil legal aid than do non-LSC providers.

When Nevadans experience civil legal needs, focus groups and key informants report that their experience will vary dependent upon statewide differences in how the court system operates, how, when and if representation is provided, and how law enforcement views and acts upon various orders. While federal funding is provided to serve the entire state, with the geographic makeup of Nevada it is virtually impossible to serve the civil legal needs of Nevadans statewide with the current level of funding.



In Northern and Southern Nevada, those interviewed indicated they often learned about services by word of mouth or through a court or social service referral. Those interviewed reported receiving some level of assistance, usually beginning with information, kits or forms and in some cases culminating in representation by a lawyer. Focus group participants and key informants from rural areas noted less awareness and availability of services to meet their civil legal needs and more often did not report receiving representation.

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*"One issue becomes another and another. I had a financial issue. Now I may lose my housing. If I lose my housing I will have trouble keeping my job. If I lose my job, I have bad credit and now you can't get a decent job unless you have good credit. It's a catch-22. I am trying to pay my bills and may lose my house and my job."*

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Nevada's current system is seen by some providers as crisis driven rather than prevention and intervention oriented which could be a better use of the available resources. In terms of prevention, interviewees reported that more information is needed by the general public regarding the legal system, and legal process in general, to have realistic expectations about how the system works, how much time it takes to resolve a civil legal need and what the potential outcomes are.

- Prevention activities are stunted by the fact that to educate the public about the system includes education about free or low cost services. All providers interviewed expressed trepidation about publicizing the availability of services which are insufficient to meet current demand. This reluctance to flood a system that is already drowning in clients is understandable.
- At the same time, key informants note that without intervention, the system will remain crisis oriented, rather than allowing opportunities statewide to prevent and intervene before a legal matter becomes a crisis.

Civil legal aid resources exist at varying levels throughout the state due to differences in available resources, eligibility requirements, and demand. In general, organizations serve target populations and must prioritize client cases because of demand that exceeds resources available.

Civil legal need experts in Nevada noted that a true continuum of services is needed statewide to ensure that regardless of the civil legal need, or where someone lives, that some assistance is available. Strengthening the continuum of services could include ensuring statewide access to information and forms, kits for certain types of legal needs, classes, one on one coaching related to forms, access to a paralegal or person who can manage the navigation of the system and access to an attorney.

- In general, family, finance, and housing civil legal needs are the greatest and most common needs identified in both focus group and telephone survey results but immigration needs were only identified in the small format focus groups. It is assumed that persons were less likely to identify immigration as an issue during the telephone survey.

Focus groups, key informant interviews and research indicate that Nevada has the following gaps in services:

- Insufficient number of low or no cost lawyers to address civil legal need cases (Washoe County, Clark County and the Balance of State)

- Insufficient specialty clinics to address family and consumer cases (Washoe County, Clark County and the Balance of State)
- Insufficient pro bono attorneys including those with expertise in specific areas of civil legal need including financial, housing and family law (Washoe County, Clark County and the Balance of State)
- Inability to address immigration issues (Washoe County, Clark County and the Balance of State)
- Need for expanded self-help services with support including non-legal supportive services
- Need for increased education and awareness about civil legal needs and options to address the needs
- Need for improved coordination between social and legal services to address ancillary issues that impact legal needs and that may become a secondary legal need

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*"I first came here for help with a bankruptcy. Now I am back for help with a divorce. They (Legal Services) really make a difference when you don't know where to go."*

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These needs are only likely to increase. Research indicates that Nevada's population has exploded in the past 20 years and will continue to change in the near future. Growth of the state as a whole, coupled with changes to the demographic make-up, present unique issues for serving the state's needs for civil legal aid. Nevada's overall population growth has been accompanied with shifts to the demographic make-up of the state. One such shift is a significant jump in the number of older adults and seniors as a percentage of the total population. In Nevada, the greatest shift has been a recent increase in the number of persons of Hispanic Origin. Growth of the Hispanic population is projected to continue, reaching an estimated 31% of the total population by 2020. Clark and Washoe Counties have a far greater concentration of persons of Hispanic Origin and also Asian or Pacific Islanders than the rest of the state. Clark County also has a much higher percentage of Black individuals than other areas of the state.

In 2005, updated estimates developed by the Census Bureau indicated that 11.1% of Nevadans were below the poverty level during the past 12 months. In 2006, over one-fifth (21.5%) of families maintained by women with no spouse present had incomes below the poverty level, compared to 3.9% of families in married couple households. Children in female headed households with no husband present are also far more likely to experience poverty. Significant disparities in poverty are also associated with race and ethnicity. In 2006, 17.4% of Native Americans in Nevada lived below the poverty level during the past 12 months, more than any other racial or ethnic group. While poverty status provides some measure of extreme financial need, families earning incomes far above the poverty income level can also experience hardships in keeping up with the cost of living and accessing legal services. Almost one-third of all households in Nevada have a total household income (combining the incomes of all members of the household) under \$35,000 per year.

The results of the telephone survey showed that many people experienced more than one legal problem within the past 12 months. For example,

- Of 207 persons that identified a housing problem, 74% of this group also reported financial problems, 50% reported a domestic problem, and 46% reported a benefit problem.

In terms of housing, the Department of Housing and Urban Development (HUD) in 2002 published a report that indicated that consistently high rates of discrimination were found across all 23 metropolitan areas included in the study and across three minority groups tested including Black/African American, Hispanic and Asian or Pacific Islander individuals. Although data for Nevada was not provided by this study, it is reasonable to believe that the high rates in discrimination found across all regions of the country are also experienced in Nevada's urban areas. According to RealtyTrac, an online marketplace for foreclosure properties, Nevada posted the nation's highest foreclosure rate in 2007 with 3.4% of its households entering some stage of foreclosure during the year.

- The Nevada Civil Legal Needs Survey found that 47% of households surveyed faced some type of personal finance or consumer-related legal issue within the past 12 months. Focus group and key informant results validate this finding.
- The most prevalent issue by far was being contacted by a collection agency regarding unpaid bills; this happened to 33% of households surveyed. Three other issues were reported by 11% to 14% of households each: having a major problem with a creditor, having a local utility cut off service or threaten to stop service to the household, and dealing with incorrect information in a credit report.
- Nevadans had the second-highest average credit card balance in the nation at \$7,645 in 2007.

Almost 700,000 people – over 28% of the state's population – had been at or below 200% of the federal poverty level in the preceding year. This may be a better indicator of the prevalence of financial duress than looking at the standard poverty level as many people below 200% of the federal poverty level are likely to have financial issues. In 2007, there were a total of 10,865 filings for personal bankruptcies in Nevada courts. 83% of these filings occurred in Southern Nevada and 17% were in Northern Nevada. Nevada also ranked 2<sup>nd</sup> in the nation in identity theft complaints per 100,000 people.

The Nevada Civil Legal Needs Survey found that one-fourth (26%) of respondents experienced a family- or domestic-related legal problem. The telephone survey only reached adults and did not directly address any legal issues from the perspective of children. Therefore it does not provide a basis to understand the extent to which children need legal advocates on family-related civil matters that directly involve the child such as disputes over custody or guardianship of children, advocacy for children removed from their homes due to substantiated abuse or neglect, and efforts to terminate parental rights. Key informant interviews indicated that child advocacy is an unmet need throughout the state.

In 2006, a total of 65,085 domestic violence contacts were made. Of this total, 38,297 were recorded as first time contacts, meaning they had not previously contacted the agency regarding an incident of domestic violence. Reporting domestic violence is a difficult and sometimes dangerous event requiring trust between the domestic violence victim and the agency. For this reason, phone survey data related to domestic violence, such as the data obtained in the Nevada Civil Legal Needs Survey, is likely to only show the tip of the iceberg.

Statewide in Nevada, there were 118,148 open cases for determining child support payment obligations or enforcing existing child support payment obligations as of February 2008. Of these, payment obligations had been established in 74,716 cases (63% of the total) so that the primary legal issue in these cases is enforcement of the payment obligation. According to a 2007 report in the Las Vegas Review-Journal, child support was collected in only 46% of the cases in the state during fiscal year 2004-05. A performance audit of the state child support system showed that Nevada ranked 49<sup>th</sup> in the country in establishing paternity, 49<sup>th</sup> in the amount of child support collected, and 48<sup>th</sup> in the number of cases where support payments are not current. Nancy Ford, administrator of the state Welfare Division, specifically noted that “part of the problem is that Nevada’s child support system relies heavily on legal procedures.”

In the twelve month period from July 1, 2006 through June 30, 2007, there were 6,179 elder abuse and neglect complaints reported in the state database. This is an increase of over 28% in just two years from 2004-05, when there were 4,806 complaints of elder abuse recorded. Of the 2006-07 complaints, 1,579 or about 25% of the complaints were substantiated through investigation by law enforcement or other agencies. As with child abuse and neglect, there is no way to know the true prevalence of elder abuse and neglect since undoubtedly many incidents go unreported.

An important measure of legal support needs is the number of actual court cases related to family issues. From July 1, 2005 to June 30, 2006, there were 59,571 family-related cases opened in Nevada’s District Courts plus an additional 1,740 requests for Domestic Violence Protection Orders processed by Justice Courts, producing a total of 61,311 family-related cases in Nevada courts. There were a total of 9,990 family court cases that potentially involve child support obligations – 1,611 Support/Custody cases, 7,785 Uniform Interstate Family Support Act cases involving maintenance of a spouse or child when one party resides in another state, and 594 paternity cases. Other data indicates that there are currently over 43,000 cases were in various stages of the legal process to determine child support obligations, and tens of thousands of other cases where child support obligations have been established but support payments are not current.

The total of over 61,000 family-related cases that were opened in court in a 12 month period should be viewed as an indicator of the minimum level of demand for family-related legal services. The actual demand is certain to be far greater, given the need for legal assistance to evaluate situations and determine an appropriate course of action before a case would make it to the court system. In addition, from April to June 2006, there were approximately 6,000 children in out-of-home placements, primarily in foster care homes, while only 12 funded child advocacy legal aid attorneys in the state.

A variety of situations related to employment can create needs for legal assistance. Discrimination in hiring, firing, discipline, promotions, or the terms of employment is a commonly recognized challenge. Additional employment-related issues can include illegal employment practices, problems accessing unemployment compensation or workers compensation benefits, problems with pension plans or other retirement benefits, and issues with pay or withholding. The Nevada Civil Legal Needs Survey reported that 19% of respondents had some type of employment-related legal problems within the last 12 months.

On the average in 2007, over 13,000 people every month file an initial claim for unemployment benefits (in other words, request benefits for the first time for a specific period of unemployment). For the first six months of 2007, an average of 12,675 people per month filed an initial claim and 6,118 people received an initial payment after being approved to receive benefits. This suggests that roughly 50% of people filing initial claims were not able to receive benefits.

Unemployment rates in Nevada have been climbing steadily for the past year. In January 2008, the seasonally-adjusted unemployment rate for Nevada was 5.5%, compared to 4.5% in January 2007. A national survey conducted by Harris Interactive for Kelly Services and CareerBuilder.com found that one in five working Americans feel they have faced discrimination on the job. More specifically, 23% of diverse workers said they had been discriminated against or treated unfairly in the workplace based on their background.

Persons with disabilities or serious health conditions can face unique civil legal needs such as being fired by an employer in violation of state and federal laws, workplace modifications not being made, losing coverage of a health insurer, and inaccessibility of public facilities. For 2006, the lowest estimate found was that 12.6% of Nevada's population ages 5 and over – 287,816 people – had at least one disability. A much higher percentage of people in the rural regions of the state have disabilities than in the urban areas; over 16% of the population outside of Clark and Washoe Counties has at least one disability, compared to less than 13% in Washoe County and fewer than 12% in Clark County. The percentage of seniors with physical disabilities – 29.5% – is particularly notable since accommodations like ramps, handrails and other structural supports are often needed to make public facilities accessible for persons with physical disabilities.

One portion of the Nevada Civil Legal Needs Survey dealt with civil legal problems associated with applying for or receiving government assistance program benefits for individuals and families. More than half (61%) of survey respondents had applied for or received benefits from at least one public assistance program such as Medicare, Medicaid, Social Security for the disabled, Supplemental Security Income (SSI), food stamps and other such programs. The survey results indicated that 24% of respondents experienced a problem related to public benefit programs.

On the surface, the results of the Nevada Civil Legal Needs Survey would suggest that relatively few legal problems are experienced related to immigration status or language proficiency. Only 4% of survey respondents overall indicated that they had any immigration or language problems in the last 12 months. The Census Bureau estimated that in 2006, there were 475,914 foreign born residents of Nevada, accounting for 19% of the state's total population. Of these immigrants, 303,409 were not a U.S. citizen and the remaining 172,505 were naturalized citizens. Income levels tend to be low among this population. 16% were living below 100% of the federal poverty level and another 29% were between 100% and 199% of the poverty level, so overall 45% of non-citizen immigrants were below 200% of the poverty level.

*My husband is getting no help at all. He had to stop working because of his health. He was in Vietnam and exposed to Agent Orange—he has multiple health problems—diabetic, on oxygen, and needs therapy. But we can't get disability or social security because he had retirement, and supposedly he doesn't qualify. He used to make \$4,000 a month and his retirement income is \$1,700. He's filed claims through the VA but they say it just takes forever... meanwhile we're barely getting by. We don't know where to turn.*

According to the 2006 American Community Survey, 27% of Nevada residents speak a language other than English as their primary language at home. Almost 300,000 people in Nevada ages 5 and over speak English less than “very well.” This may make it more difficult to interpret information about available services in order to know where to go for assistance, difficult to communicate with legal aid providers when they do locate a provider, and difficult to understand written and verbal information provided by legal aid providers and courts. Many focus group participants identified experiencing immigration, family and financial legal needs.

The Nevada Civil Legal Needs Survey reported that approximately one in 10 households with a Native American tribe member experienced problems related to being Native American that could require legal assistance. If this rate was applied to the estimated 36,000 Native Americans in Nevada in 2007, it would translate into about 3,600 people experiencing problems specifically related to being Native American.

The results of the Nevada Civil Legal Needs Survey found that 12% of survey respondents indicated that they or a household member had court or administrative hearing issues within the past 12 months. From July 1, 2005 to June 30, 2006 for matters not covered previously in this summary; a total of 109,491 such cases were opened during the year. In addition, there were 39,443 housing-related civil cases and 59,571 family-related cases, bringing the total civil caseload up to 208,505.

The State Bar of Nevada data system shows that there are a total of 5,997 active members that reside and practice within the state. An additional 1,227 State Bar of Nevada members reside outside of the state. Judges are not included in either of these statistics--a total of 152 judges are active members of the State Bar of Nevada. The fewest legal aid resources per person in poverty are in Clark County, closely followed by the Balance of State (all counties besides Clark and Washoe Counties).<sup>1</sup> The ratio in Clark County is 5,495 persons living in poverty per legal aid attorney (5,495:1). In Washoe County, the ratio is 2,645:1. The ratio for the Balance of State is 5,256:1. The ratio for Nevada as a whole is 4,706:1.<sup>2</sup>

The next component of this project is to engage in strategic planning to address the needs detailed in this assessment. Therefore, the following recommendations are provided as a starting point for discussion rather than a declaration of what must be done. Any strategy selected must be realistic, actionable and measureable. Given the current economic climate this will surely be a challenge requiring creativity and collaboration on the part of all stakeholders seeking to improve the system.

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*Focus group participants describe life without a legal work permit as “living in the shadows and in a constant state of fear;” fear to drive a car, fear to pay a parking ticket, fear to call take action against landlords for unsafe housing, fear to press discrimination charges for employment or workplace safety, fear to go to a doctor for preventative medicine, fear to speak to police officers, and most of all fear that their children will be taken away.*

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<sup>1</sup> For this calculation, Carson is included with the Balance of State. Legal aid providers known to provide services to rural areas have offices in Washoe County, Clark County, and Carson City.

<sup>2</sup> This calculation excludes child advocacy attorneys. When child advocacy attorneys are included, the highest ratio of persons in poverty to legal resources is the Balance of State. There are four child advocacy attorneys in Washoe County and eight in Clark County. There are no legal aid attorneys that provide services specifically for children in Carson and the Balance of State.

System improvement opportunities that are most actionable and realistic should be identified by the stakeholders most directly responsible for implementing the strategies suggested. Thus, providers are encouraged to continue their efforts to improve the service delivery system while the judiciary endeavors to implement solutions in the courts or by statute.

Some recommendations to strengthen the civil legal justice system include:

- Review fund development options and select strategies to increase resources to meet civil legal needs in Nevada. Examine opportunities for funding from charitable and philanthropic organizations interested in ensuring access to justice.
- Secure additional resources for more attorneys for current legal aid providers and to support additional services such as classes and clinics statewide.
- Establish priorities for unmet need that take into consideration the geographic and socio-economic barriers experienced by low-income Nevadans including addressing the gaps in services statewide.
- Increase options and the manner in which pro bono lawyers can provide services to low-income Nevadans, matching their interest and ability with the unmet needs. It can be more expensive for everyone involved to try and increase and manage pro bono cases so this should not be an alternative to securing more staff attorneys for legal aid providers.
- Increase outreach and education to individuals and groups to help them identify what constitutes a civil legal need and how to access assistance. Provide training and information on advocacy skills, the legal process and law-related issues they are likely to encounter.
- Utilize a mix of legal support strategies to include self-help, brief advice, increased community education and awareness and representation to maximize reach with the resources available.
- Explore the use of panels of lawyers and/or judges to provide pro bono mediation or arbitration of civil legal issues.
- Promote solutions that address legal problems before they become a crisis.

### Organization of the Report

The *Introduction* section of this report provides background on the Access to Justice Commission in Nevada.

The *Methodology* section describes the research conducted and the questions asked of focus group and key informant participants.

The *Assessment of Needs* section provides a demographic profile of Nevadans, highlighting the issues addressed through the telephone survey with data from Nevada to explain the current circumstances in the state.

The *Assessment of Available Services* section describes the legal aid resource available in Nevada; the persons served and compares the services to the persons living in poverty in the state.

The *Analysis of Gaps and Priorities* outlines findings from the research, telephone survey, key informant interviews and focus groups conducted during the project.

The *Recommendations* provides a starting point with potential strategies to evaluate during strategic planning.

A *Glossary* of terms and *References* conclude the report.

All data provided in the Report Summary can be found with references, in the full report. Text boxes found throughout the report contain focus group and key informant participant comments.

The following tables and figures are excerpted from the report:

This table indicates the legal need issues identified by telephone survey respondents and the other problems associated with that primary need:

**Issues Identified by Survey Participants and Associated Issues Identified**

<b>Need (n)</b>	<b>Top Three Problems (shown by percentage of total (n) in first column)</b>
Housing (207)	Finance (74%), Domestic (50%), Benefits (46%)
Domestic (299)	Finance (74%), Housing (47%), Benefits (46%)
Employment (188)	Finance (77%), Domestic (55%), Benefits (47%)
Disability (116)	Finance (83%), Benefits (65%), Domestic (60%)
Benefits (255)	Finance (71%), Domestic (45%), Housing (37%)
Finance(470)	Domestic (40%), Benefits (39%), Housing (33%)
Immigration(29)	Finance (66%), Housing (55%), Domestic (45%), Employment (45%)
Native American (9)	Finance (67%), Benefits (56%), Housing, (44%), Domestic (44%), Employment (44%)
Civil (118)	Finance (69%), Domestic (44%), Benefits (43%)

*Source: Analysis of Survey Data Used in Nevada Civil Legal Needs Survey Final Report. (2008). Gene Kroupa and Associates, LLC.*

This table indicates the legal need issues identified by focus groups and providers:

**Self Reported Top Legal Needs in Nevada, 2008**

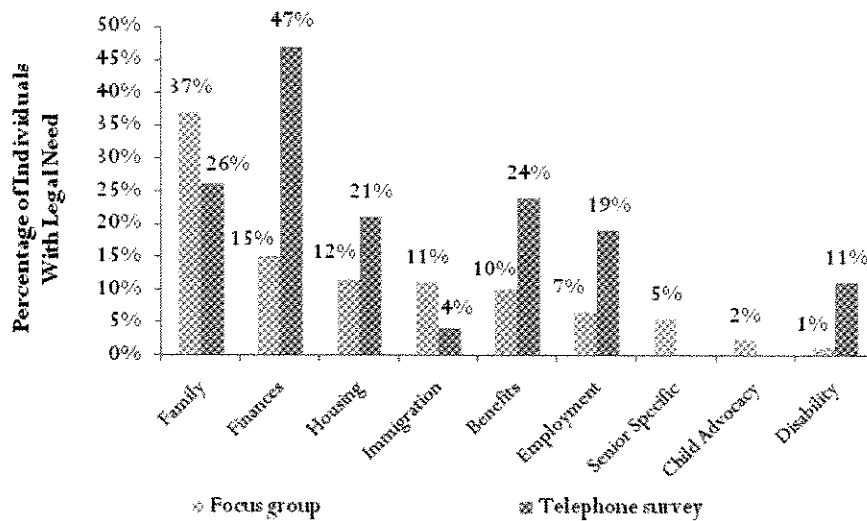
<b>Clark County</b>	<b>Washoe County</b>	<b>Balance of State</b>
Financial	Financial	Financial
Family	Domestic Violence	Family
Benefits	Child Advocacy	Benefits
Immigration	Immigration	Immigration
		Housing

*Source: Key Informant interviews with legal service providers in Clark and Washoe Counties and Balance of State.*



The following table compares focus group responses with telephone survey results:

**Total Percentage of Types of Civil Legal Needs**



Source: Focus Groups and Phase 1 Telephone Survey

The top need identified by the telephone survey was finance and consumer-related problems. They are described in more depth in this table:

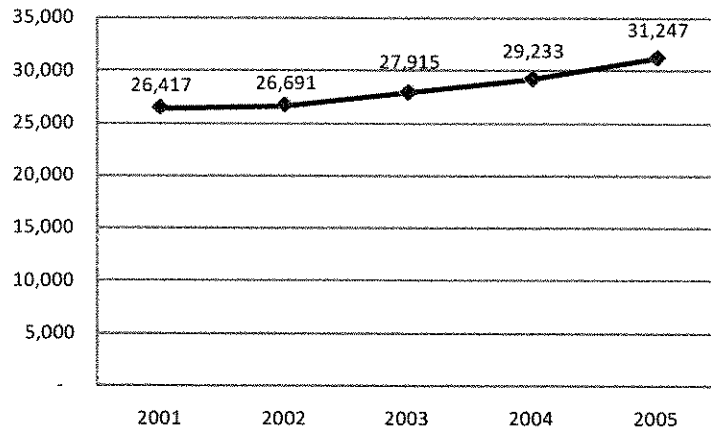
**Prevalence of Finance/Consumer-Related Legal Problems Among Survey Respondents**

Issue	Percent of Households
Any finances/consumer problem	47%
Contacted by a collection agency regarding unpaid bills	33%
Had a major problem with a creditor	14%
A local utility cutoff or threatened to stop service to household	13%
Experienced problem due to incorrect information in credit report	11%
Had problem with a business overcharging for a product or service	8%
Had a problem with loan or credit where the interest rate, fees or repayment terms were not adequately disclosed	7%
Had problem with a business concerning repairs on home that required paying someone else to fix them	5%

Source: Nevada Civil Legal Needs Survey Final Report. (2008). Gene Kroupa & Associates, LLC.

This table indicates that legal needs related to Domestic Violence are only expected to increase in Nevada.

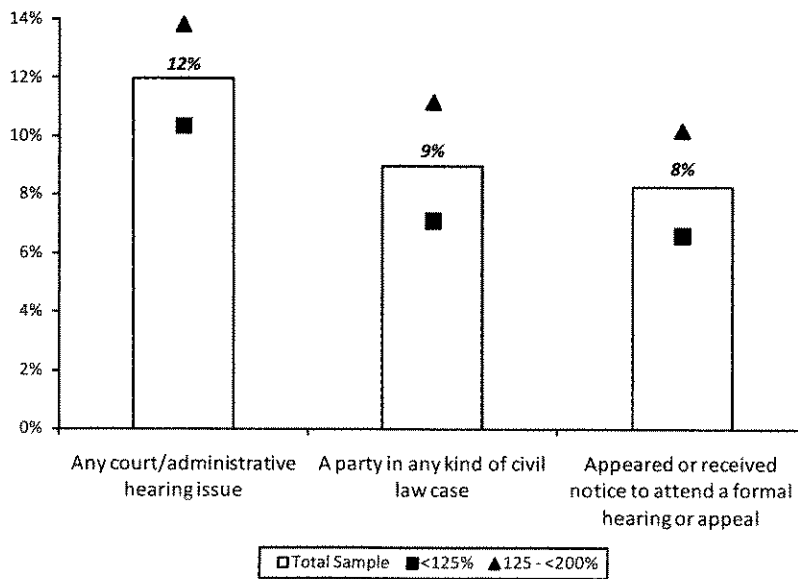
**Domestic Violence Incidents Reported to Law Enforcement**



Source: Domestic Violence Incidents Reported (2006). Nevada Department of Public Safety.

One measure of legal needs is the percentage of households surveyed that indicated involvement in civil or administrative court proceedings. The majority indicated not having legal representation.

**Percentage of Households Involved in Civil/Administrative Court Proceedings**



Source: Nevada Civil Legal Needs Survey Final Report. (2008). Gene Kroupa & Associates, LLC.

When examining opportunities to enhance access to civil legal aid, the table below indicates that access could be improved by increasing the total number of attorneys for legal aid providers and by engaging more Nevada attorneys to provide legal aid services.

**Total Attorneys by County and Ratios of Persons per Attorney Resource**

	<b>Total Number of Attorneys<sup>3</sup></b>	<b>Total Population to Nevada Attorneys<sup>4</sup></b>	<b>Ratio of Persons in Poverty Population to Nevada Attorneys<sup>5</sup></b>	<b>Total Number of Legal Aid Attorneys</b>	<b>Ratio of Persons in Poverty to Legal Service Providers<sup>6</sup></b>
Clark County	4,264	401	45	35	5,495
Washoe County	1,237	316	32	15	2,645
Carson City	245	227	23	6	*
Balance of State (All Counties Except Clark, Carson, and Washoe)	246	1,031	105		*
Reside Out of State	1,227*	--	--		--
<b>Total</b>	<b>5,997</b>	<b>402</b>	<b>--</b>	<b>56</b>	<b>4,706</b>
	(*7,219 including those that reside out of state)				

\*The ratio for the combined area of Carson City and the Balance of State is 5,256 persons per legal service attorney.

Source: State Bar of Nevada, May 13, 2008

<sup>3</sup> Active Members of the State Bar of Nevada that reside in-state

<sup>4</sup> 2005 Census Population / 2008 Active Members of the State Bar of Nevada that reside in-state

<sup>5</sup> 2005 Census Persons in Poverty (SAIPE) / 2008 Active Members of the State Bar of Nevada that reside in-state

<sup>6</sup> 2005 Census Persons in Poverty (SAIPE) / 2008 Legal Service Provider Attorneys

The number of family cases in Nevada District Courts is an indicator of need for legal representation. Family legal needs were identified by a majority of focus groups and key informants as an unmet and growing need in Nevada.

**Family Cases in Nevada District Courts, 7/1/2005 – 6/30/2006**

	Marriage Dissolution	Support/ Custody	Uniform Inter- state Family Support Act	Adop- tions	Pater- nity	Termin- ation of Parental Rights	Misc. Domestic Relations	Guard- ianship	Mental Health Cases	Domestic Violence Protective Orders (TPOs)	Re- opened cases	Total Family Cases
First District: Carson City and Storey County	447	16	154	27	15	25	45	75	0	0	1	804
Second District: Washoe County	2,755	303	1,613	177	51	204	256	493	429	1,890	2,968	11,139
Third District: Churchill and Lyon Counties	448	26	514	24	1	32	41	73	0	0	0	1,159
Fourth District: Elko County	310	30	258	22	24	16	31	60	0	212	57	1,020
Fifth District: Esmeralda, Mineral and Nye Counties	810	46	473	6	7	7	43	50	0	24	44	1,510
Sixth District: Humboldt, Lander and Pershing Counties	167	12	197	15	6	15	6	25	0	0	17	460
Seventh District: Eureka, Lincoln and White Pine Counties	77	7	53	5	0	8	0	14	0	1	16	181
Eighth District: Clark County	14,965	1,157	4,461	669	476	757	1,073	1,390	2,321	8,869	6,468	42,606
Ninth District: Douglas County	510	14	62	29	15	14	9	38	0	0	1	692
<b>Total</b>	<b>20,489</b>	<b>1,611</b>	<b>7,785</b>	<b>974</b>	<b>594</b>	<b>1,078</b>	<b>1,504</b>	<b>2,218</b>	<b>2,750</b>	<b>10,996</b>	<b>9,572</b>	<b>59,571</b>

Data for Lincoln, Mineral and White Pine Counties are incomplete.



## **Assessment of Civil Legal Needs and Access to Justice in Nevada**

### **Fact Sheet on a report to the Supreme Court of Nevada Access to Justice Commission**

Failure to provide equal access to justice has significant social and economic implications for Nevada. While it is largely accepted that access to justice is a public responsibility, it also requires a commitment of resources. In Nevada, those resources are woefully inadequate. The lack of investment in providing access to justice costs all citizens economically and socially in the long term.

#### **Legal Aid System**

- Participants described Nevada's civil legal system as one with insufficient resources and pockets of unmet need.
- Because of the scarcity of resources, there are groups of individuals experiencing a lack of access either due to their geographic location, not meeting eligibility requirements or because no funding is available to serve a particular type of legal need. Providers funded by the Legal Service Corporation (LSC), have different funding requirements, mandates and priorities in providing civil legal aid than do non-LSC providers.

#### **Legal Needs**

- Over two-thirds of low to moderately low income households experience significant civil legal problems that would ordinarily require at least some assistance from an attorney in order to resolve them.
- In general, family, finance, and housing civil legal needs are the greatest and most common needs identified in both focus group and telephone survey results. Immigration needs were

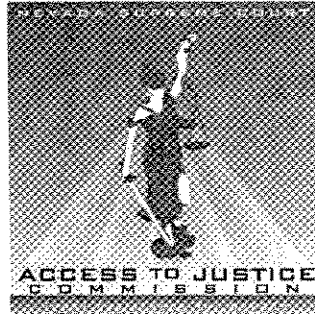
identified in the small format focus groups. It is assumed that persons were less likely to identify immigration as an issue during the telephone survey.

- 20% of those with one or more legal problems received help from a lawyer for at least one but not all of the legal problems they identified. Many of those who asked for help did not receive help from a lawyer.
- Many people experienced more than one legal problem within the past 12 months. Of 207 persons that identified a housing problem, 74% of this group also reported financial problems, 50% reported a domestic problem, and 46% reported a benefit problem.
- 47% of households surveyed faced some type of personal finance or consumer-related legal issue within the past 12 months. Focus group and key informant results validate this finding. The most prevalent issue by far was being contacted by a collection agency regarding unpaid bills; this happened to 33% of households surveyed. Other issues reported included: having a major problem with a creditor, having a local utility cut off service or threaten to stop service to the household, and dealing with incorrect information in a credit report.

### **Issues with Access**

- Nevada's geographic expanse with rural, urban and frontier counties poses a challenge in providing legal aid as it is expensive to maintain offices in locations with small population centers. Focus group participants from rural areas and key informants noted less awareness and availability of services to meet their civil legal needs and more often did not report receiving representation.
- Nevada's population growth over the past 10 years, coupled with a dramatic shift in the demographics of Nevada's residents impacts service delivery. With more seniors, a growing immigrant population, and a growing number of homeless individuals and families, the demand on the legal system will only continue to increase.
- Nevadans in search of assistance, particularly in the area of family law continues to grow. Only a small portion of these cases are represented.
- People who need legal aid frequently do not know about the availability of civil legal assistance or that they may be eligible for legal services.
- People who need legal help and meet the eligibility requirements for free legal aid often don't seek help because they believe (often correctly) that the program will not be able to assist them.

# The Supreme Court of Nevada Access to Justice Commission

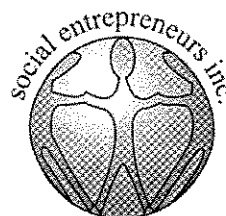


## Statement on Access to Justice and Meeting Unmet Civil Legal Needs in Nevada

2008

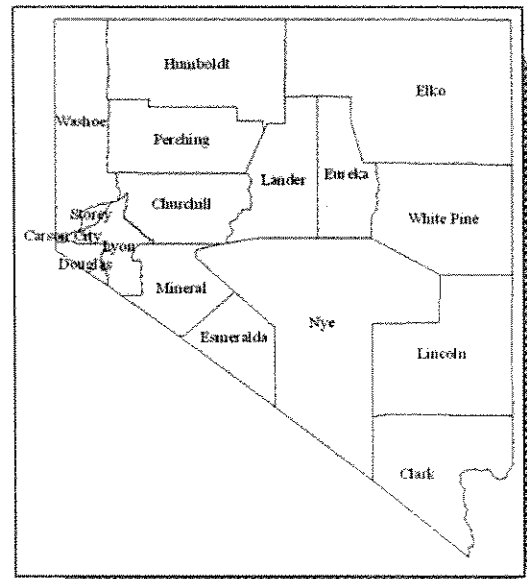
DRAFT

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The Supreme Court of Nevada created a permanent Access to Justice Commission (ATJC) in August 2006. The Access to Justice Commission's members include judges, attorneys and corporate partners. The Commission is supported by a Director who is employed by the State Bar of Nevada. In accordance with Rule 15 of the Supreme Court of Nevada, the commission is responsible for assessing the needs of Nevadans with limited means for legal services and developing statewide policies to further access to justice. In 2007, Nevada became one of many states to endeavor to assess the needs of residents related to access to justice.

Insert Access to Justice Commission Members



This study was made possible through the leadership and guidance of the Supreme Court of Nevada Access to Justice Commission, the Access to Justice Telephone Survey and Needs Assessment Subcommittee and the State Bar of Nevada.

For More Information

The Access to Justice Commission (ATJC) may be contacted through Kristina Marzec, Director  
Access to Justice Commission  
State Bar of Nevada  
(702) 317-1404 Toll Free (800) 254-2797



# Case Statement

## Preamble

Access to justice is a basic human right. All persons living in Nevada should have access to civil justice equally. This includes access to a continuum of services including representation by an attorney.

The lack of investment in providing access to justice costs all citizens both economically and socially in the long term. Failure to provide equal access has significant implications for Nevada. While it is largely accepted that access to justice is a public responsibility, it also requires a commitment of resources. In Nevada, those resources are woefully inadequate.

Addressing the gap in access to justice requires establishing priorities for unmet need that take into consideration the geographic and socio-economic barriers experienced by low-income persons that live in Nevada as well as addressing the gap in services statewide.

## Legal Aid System

- Participants in the Nevada Legal Needs Assessment Study described Nevada's civil legal system as one with insufficient resources and pockets of unmet need.
- Because of the scarcity of resources, there are groups of individuals experiencing a lack of access either due to their geographic location, not meeting eligibility requirements or because no funding is available to serve a particular type of legal need. Providers funded by the Legal Service Corporation (LSC), have different funding requirements, mandates and priorities in providing civil legal aid than do non-LSC providers.

## Legal Needs

- Over two-thirds of low to moderately low income households experience significant civil legal problems that would ordinarily require at least some assistance from an attorney in order to resolve them.
- In general, family, finance, and housing civil legal needs are the greatest and most common needs identified in both focus group and telephone

*Equal justice under law is not merely a caption on the facade of the Supreme Court building, it is, perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists. It is fundamental that justice should be the same, in substance and availability, without regard to economic status.*

Lewis Powell, Jr.  
U.S. Supreme  
Court Justice

survey results. Immigration needs were identified in the small format focus groups. It is assumed that persons were less likely to identify immigration as an issue during the telephone survey.

- 20% of those with one or more legal problems received help from a lawyer for at least one but not all of the legal problems they identified. Many of those who asked for help did not receive help from a lawyer.
- Many people experienced more than one legal problem within the past 12 months. Of 207 persons that identified a housing problem, 74% of this group also reported financial problems, 50% reported a domestic problem, and 46% reported a benefit problem.
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### Issues with Access

- Nevada's geographic expanse with rural, urban and frontier counties poses a challenge in providing legal aid as it is expensive to maintain offices in locations with small population centers. Focus group participants from rural areas and key informants noted less awareness and availability of services to meet their civil legal needs and more often did not report receiving representation.
- Nevada's population growth over the past 10 years, coupled with a dramatic shift in the demographics of Nevada's residents impacts service delivery. With more seniors, a growing immigrant population, and a growing number of homeless individuals and families, the demand on the legal system will only continue to increase.
- Nevadans in search of assistance, particularly in the area of family law continues to grow. Only a small portion of these cases are represented.
- People who need legal aid frequently do not know about the availability of civil legal assistance or that they may be eligible for legal services.

- People who need legal help and meet the eligibility requirements for free legal aid often don't seek help because they believe (often correctly) that the program will not be able to assist them.

### **Goals**

- *Increase the number of legal aid attorneys throughout the state.*
- *Increase the pro-bono options and number of attorneys providing pro-bono services throughout the state.*
- *Increase awareness and support for more legal aid attorneys, the need for additional resources and information on how to navigate the legal system.*
- *Insufficient components of the continuum of care of civil legal aid services are in place in Nevada.*

### **Recommendations**

Review fund development options and select strategies to increase resources to meet civil legal needs in Nevada.

Secure additional funding for more staff for current legal service providers and to support additional services such as classes and clinics statewide.

Increase the options and manner in which attorneys provide services to low-income persons living in Nevada, including pro bono services, matching their interest and ability with unmet need.

Increase outreach and education to individuals and groups to help them identify what constitutes a civil legal need and how to access and provide assistance. Provide training and information on advocacy skills, the legal process and law-related issues they are likely to encounter.

Increase outreach and education to private attorneys to raise awareness of civil legal needs, the lack of access to justice in Nevada and ways they can contribute to improving access to justice.

Utilize a mix of legal support strategies to include self-help, brief advice, increased community education and awareness and representation to maximize reach with the resources available.

**TAB 5**

## From the Chair...



by Joanne M. Garvey  
Chair of the ABA Commission  
on IOLTA

Readers of this column know that efforts to increase IOLTA revenues, particularly through rule changes, have been an ongoing focus of attention for me and for the Commission on IOLTA. There is no question that this emphasis is well-placed because the need for additional funding for legal services is ever-present. But it is also important to remember that increasing revenue is only one of the important tasks handled by IOLTA programs. If you look closely at IOLTA programs around the country, you will see that many of them are leaders in statewide efforts to improve the delivery of legal services.

The most obvious manifestations of this leadership are IOLTA grant programs, which contribute millions of dollars every year to support legal aid programs both large and small. IOLTA provides a vital part of the budget for all of these programs, and enables their work year after year. But IOLTA programs do much more than write checks. They look to determine how needs in their state are changing, and how grants can respond to those needs, support innovative approaches to meeting them, or improve access to justice in general.

Several events have reminded

*(continued on page 4)*

## A New Frontier for IOLTA: Interest Rate Comparability

by Jane E. Curran

*Dialogue is pleased to bring you a two-part look at IOLTA rate comparability requirements from Jane E. Curran, executive director of the Florida Bar Foundation. The first part focuses on the basics of comparability and some common questions associated with it. Part two, to be published in the Fall 2006 issue, will focus on the specifics of implementing a comparability requirement.*

**V**eteran IOLTA directors and trustees have long heard the phrase "revenue enhancement" in connection with IOLTA. Efforts to improve the net yield generated on IOLTA accounts are almost as old as the concept of IOLTA itself. Strategies to secure better rates have included direct negotiations with banks, campaigns by participating lawyers advocating for better rates, and public recognition of those banks paying more favorable rates. These have succeeded in producing incremental gains in many cases, and even some large gains in others.

Nonetheless, IOLTA supporters in many states have been left with a sense of frustration. After years of hard-earned agreements with banks to raise interest rates, those paid on IOLTA accounts often still fall short of those on non-IOLTA accounts. What can IOLTA programs do to level the playing field and gain access to the higher rates paid on other accounts?

Enter interest rate comparability. Interest rate comparability for IOLTA accounts may seem a jumble of vague concepts, but the result is clear. First embraced in Alabama, Florida and Ohio in the early 2000s, comparability is yielding significant increases in IOLTA revenue. A growing number of IOLTA programs have or are in the process of adopting comparability (please see the sidebar on page 7).

These comparability requirements, distinct from principal balance increases or higher rates on consumer checking generally, have generated impressive increases in IOLTA revenue in recent years. For example, Florida's annual IOTA income has grown by 298 percent from June 2004, when the program began implementing comparability in earnest, to June 2006.<sup>1</sup> Over that same time, because of comparability, the range of rates paid on IOTA accounts has increased. The interest rate range for IOTA accounts in 2004 was .1 percent to 1.75 percent; today it is .15 percent to 4.22 percent.

### Comparability defined

Under comparability, IOLTA accounts are paid the highest interest rate or dividend generally available at a bank to its other customers when IOLTA accounts meet the same minimum balance or other qualifications, if any.

Three key amendments to an IOLTA rule or official guidelines are needed for a comparability program to be effective. The first permits use of REPOs (backed by government securities)<sup>2</sup> and government money market funds for IOLTA accounts (the most common products banks

*(continued on page 4)*

## From the Chair...

(continued from page 3)

me of this important part of IOLTA programs' work. In May, the Commission visited representatives of the North Carolina State Bar and its IOLTA Plan. Beyond basic support for the state's main legal aid program, IOLTA funds support a range of activities, from the North Carolina Justice Center, the former state resource center which now focuses on impact litigation, research and analysis and public policy research, to Land Loss Prevention, a program designed to help minority, low-income and elderly families retain their ownership of farmland throughout North Carolina.

IOLTA funds also support summer public interest internships for students at the North Carolina's five accredited law schools. In addition to expanding the services available to low-income people, this program provides an ingenious indirect benefit by serving as a recruiting tool for legal aid offices, and educating a new generation of law students and young lawyers about the value of legal aid and the ideal of equal access to justice. These are only a few of the highlights of North Carolina's active grants program.

Other examples of strategic grant-making exist elsewhere. The pages of this issue of *Dialogue*

include an IOLTA "grantee spotlight" feature on JustChildren, an innovative children's advocacy program in Virginia. It has just been awarded a grant by the Legal Services Corporation of Virginia, which recognized the potential for JustChildren to build on its existing approach and capabilities by expanding its services and advocacy statewide. With the help of IOLTA grants, the program will engage in legislative advocacy as the only voice for children in Virginia's schools.

In the last issue of *Dialogue* we read about the Pediatric Advocacy Initiative, a medical-legal collaboration designed to address legal issues intertwined with low-income children's health problems. That model did not originate in Michigan, but the IOLTA program there recognized the possibilities it offered, and committed substantial funding to the project when the opportunity arose.

Grants and grant-related issues have been a more prominent part of the IOLTA Workshops recently. The summer program included sessions on grantee evaluation and ensuring quality in legal services delivery. The workshops also included a compelling session on how programs should allocate increased revenues. Should emphasis be placed on building program reserves—in many cases funds depleted during the last "down" cycle for IOLTA a few

years ago? Where in the priorities should investment in capacity-building projects fit? What amount of additional funding should go directly to the field programs currently struggling to meet only a fraction of the need for their services?

There is no "right" answer to these questions. Rather, leadership means confronting these questions and other factors in each state to come to a suitable outcome—as one workshop participant remarked, "an intentional, analytical, strategic approach to distributing funds." It was clear from the workshops that many IOLTA programs are assuming such leadership. And that works to the benefit of equal justice everywhere.

\* \* \* \* \*

Leadership can also be seen, of course, in the efforts to increase IOLTA revenue I mentioned earlier. I was very happy to learn that three states have succeeded in obtaining IOLTA rule changes. Connecticut and Massachusetts both have new comparability requirements which they will be working to implement later this year. Mississippi will become the latest state to convert to mandatory IOLTA, effective January 1, 2007, and has a comparability provision it will work to implement.

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## Comparability

(continued from page 3)

offer to customers who need checking features, but aren't willing to accept low consumer checking rates). The second

officially links participating lawyers' ability to hold IOLTA funds at a particular financial institution to whether that institution pays a comparable interest rate, or dividend in the case of a government money market fund. The third defines the

reference point for comparability as the highest rate or dividend available, without tying it to a specific bank product. (In contrast, early IOLTA rules were tied to standard interest-bearing consumer checking accounts.)

(continued on page 6)

## Grantee Spotlight

(continued from page 5)

Education Association, to improve opportunities for children. With increased IOLTA support, JustChildren plans to devote more resources to building an active, consistent and robust presence before the legislature.

### Conclusion

LSCV's additional support to the JustChildren Program represents an interesting and exciting direction for IOLTA. In building on locally developed practice area expertise by making it more widely available to the state as a whole, LSCV is acknowledging and rewarding an entrepreneurial approach to pressing community problems. It focuses on an area—

public education—that is of critical importance to the community served by legal service offices, but that all too often falls off of the radar screen of local programs. Finally, the grant recognizes the need for public school students to have as active and effective a voice in statewide policy making as the adults who run their schools.

*For more information about JustChildren, visit its Web site at [www.justice4all.org/programs/justchildren/](http://www.justice4all.org/programs/justchildren/) or contact legal director, Andy Block, at [andy@justice4all.org](mailto:andy@justice4all.org).*

### Endnotes

<sup>1</sup> The Legal Aid Justice Center is a non-LSC funded legal services program with offices in Charlottesville, Richmond, Petersburg and Falls Church, Virginia.

<sup>2</sup> Numerous studies of state school funding by the Education Trust are available on the organization's Web site at [www2.edtrust.org/edtrust/](http://www2.edtrust.org/edtrust/)

<sup>3</sup> See *Review of Factors and Practices Associated with School Performance in Virginia*, prepared by the Joint Legislative Audit and Review Commission of the Commonwealth of Virginia, 2004, available online at <http://jlarc.state.va.us/Reports/Rpt305.pdf>

<sup>4</sup> *Id.*

<sup>5</sup> Based on analyses by JustChildren of statistics collected by the US Department of Education.

<sup>6</sup> According to staff at the Legal Aid Justice Center, prior to the launch of JustChildren, similar perceptions existed within the Charlottesville community. After outreach and continued presence in Charlottesville, however, there are now more requests for service than the attorneys can handle.

## Comparability

(continued from page 4)

### No regulation of banks

"Hold on," say some. "Doesn't comparability regulate banks?" The answer is no. What comparability requirements do regulate is the behavior of lawyers, who are required to place their IOLTA accounts at financial institutions that meet the comparability requirement. Banks are not required to offer IOLTA accounts; they do so because they are profitable. Accordingly, their decision to pay comparable rates in order to keep IOLTA business is a voluntary one.

"Alright, but doesn't comparability set bank rates?" Again, no. Significantly, comparability doesn't compare rates among banks. Rates

paid under comparability are set by each bank for its own customers and are based on all the factors a bank normally considers when it sets rates. This feature of comparability is very important to banks. For example, a bank makes REPOs available to every customer with consistent checking balances greater than \$100,000. However, even though an IOLTA account and the checking account of XYZ Company carry the same balance, XYZ Company gets a higher REPO rate than the IOLTA account. As long as the IOLTA account with more than \$100,000 receives the sweep rate given to other customers with that balance, it's okay for XYZ Company to get a bit more, because the bank also manages the company's 401(k) plan and provides its accounts receivable financing, creating a more profit-

able relationship for the bank than the IOLTA account. This is part of the bank's standard system for calculating interest rates.

### Comparability vs. negotiation

A good question raised by IOLTA programs is, "Since we've had success in negotiating higher rates from banks, why should we adopt comparability?" A good answer is, "Maybe you don't need to." While the strategy of negotiation has proved to be frustrating to some IOLTA programs, it has produced concrete gains for others. Comparability may not be a one-size-fits-all solution. But it is well worth considering how your program might fare with a comparability requirement.

Under comparability, high balance IOLTA accounts—nor-

(continued on page 7)

## Comparability

(continued from page 6)

mally \$100,000 or more on a consistent basis—qualify for a REPO or government money-market fund rate. Even smaller IOLTA accounts, with balances as low as \$2,500, may qualify for rates higher than standard checking account rates at banks which offer “tiered” checking to other customers, but may not to IOLTA. IOLTA programs will need to analyze their IOLTA accounts and compare their negotiated rates to what a bank pays its other customers to decide if the advantages of adopting comparability are worth the time and effort.<sup>3</sup>

Faced with these possibilities, most states adopting comparability were further motivated to move on from other revenue enhancement strategies by frustration with their limits: the “one step forward, two steps backward” uncertainty of bank negotiations, the seemingly endless cycles of bank acquisition, and rates on consumer checking accounts that go down fast and rise slowly (if at all).

### Other considerations and questions

For IOLTA programs taking a close look at comparability, other questions might come up. Here are a few:

- **What if a bank doesn't offer higher-paying products for which IOLTA accounts qualify?** Then that bank is unaffected by the comparability rule, as long as it is not discriminating against IOLTA. Under comparability, banks that choose to offer IOLTA accounts no longer can claim, “We don't have a higher-paying IOLTA product.” If they pay higher rates to other customers and IOLTA accounts

## Where is comparability in effect?

The basic notion behind comparability—the belief that IOLTA accounts should earn the same rates as non-IOLTA accounts of similar size—has existed in the IOLTA community for many years. The comparability requirements that are beginning to produce impressive results this decade rely on the formula described on page 1: investment products such as REPOs are permitted, lawyers can place funds only in banks that pay comparable rates, and rates are not tied to particular products such as consumer checking accounts. States that have incorporated this formula into their IOLTA rule, statute or regulatory guidelines include the following:

**Alabama**  
**Connecticut (effective September 1, 2006)**  
**Florida**  
**Massachusetts (effective on or before January 1, 2007)**  
**Michigan**  
**Mississippi (effective January 1, 2007)**  
**New Jersey**  
**Ohio**

A number of states' rules include a comparability requirement that does not include each element in this formula. Some rules are old, and may predate the common use of vehicles such as REPOs. Other rules are new, and establish the principle of comparability while leaving some of the specific elements to be clarified in the future, when implementation may become more feasible for them.

meet the same qualifications, then they must pay a comparable rate on the qualifying IOLTA accounts.

- **What about service charges?** Banks can assess the same fees they charge other customers when the fee is tied to a higher-rate product.<sup>4</sup> For example, banks normally charge customers \$75 to \$150 per month to sweep available balances overnight into a REPO. IOLTA programs should expect to pay the same. Moreover, if a bank chooses to pay the comparable REPO rate on the checking account without actually setting up an overnight sweep to a REPO—the norm when comparability is implemented—the

REPO rate paid under that circumstance can be lowered to offset the loss to the bank of the monthly sweep fee.<sup>5</sup> Banks can, of course, choose to waive all service charges and fees on IOLTA accounts, but they aren't required to forego fee income tied to higher rates.

- **What do attorneys and law firms have to do under comparability?** Nothing. The IOLTA programs that have implemented comparability have taken the responsibility to work directly with each bank. The result typically is that banks change their rates on existing accounts and lawyers therefore do not have to go through the

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## Comparability

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steps of actually establishing a sweep account.

- **What if a bank wants to set up REPOs or government money market funds for qualifying, high-balance IOLTA accounts?**

Then the IOLTA program advises the affected attorneys and law firms that the bank has made that choice in order to comply with the comparability rule. The program provides the necessary forms for execution by the attorney or law firm, and returns them to a central bank employee identified by the bank for that purpose. The bank has made the decision for the affected attorneys and law firms.

- **What if a bank doesn't comply with the comparability requirement, but still offers IOLTA accounts?** Ohio's comparability requirement specifically provides that the bank can be "de-certified" and attorneys and law firms advised that they must move their IOLTA accounts to a complying bank. Comparability requirements elsewhere are not as explicit, but do require that lawyers deposit IOLTA funds only at banks that pay comparable rates. Implicit in this requirement is that lawyers would have to move the IOLTA funds if the bank failed to pay these rates.

The need to take such drastic action is unlikely, however, and is not the experience in states that have implemented comparability. Even when banks pay comparable rates, IOLTA accounts remain profitable. Banks also profit from the other, fee-generating relationships with an attorney or law firm that an IOLTA account brings.

## Getting help

If your program is interested in more information about comparability and revenue enhancement in general, plan to contact the ABA Commission on IOLTA and its staff:

- Commission Counsel Bev Groudine, 312-988-5771 or [bgroudine@staff.abanet.org](mailto:bgroudine@staff.abanet.org)
- Assistant Counsel David Holtermann, 312-988-5744 or [holtermd@staff.abanet.org](mailto:holtermd@staff.abanet.org)

In addition to the Commission, the Commission/National Association of IOLTA Programs Joint Technical Assistance Committee and Banking/Revenue Enhancement Committee have provided significant assistance and input to a number of states with comparability requirements. Contacting the Commission staff is the best way to tap these resources and the collective knowledge and experience of the IOLTA community. It also helps facilitate the collection of good ideas from various states that in turn can be shared with others.

When implementing a comparability requirement, you may want to consider using an outside consultant to increase your program's capacity for the data-gathering and other work that is required, such as analyzing a bank's plan to comply with the comparability rule. More information on implementation will be included in the second part of this article.

## Conclusion

Apart from conversion to mandatory IOLTA, adopting comparability promises to be the most significant source of IOLTA revenue gains in the coming years. Now is a good time to begin investigating the possibilities for your program, as the collective experience with these requirements grows and offers beneficial insights to programs crafting requirements in the future. For example, there are bells and whistles in recently-adopted comparability rules or official guidelines that can make implementation easier, especially for smaller IOLTA programs. They include offering banks compliance options such as "safe harbor" rates (a set percentage of the prevailing Federal Funds rate) and language permitting banks and IOLTA to agree upon a set rate for a specified time period.

IOLTA programs should expect that implementing comparability won't be done quickly. IOLTA programs will want to take a reasonable and helpful approach in working with banks. After all, IOLTA itself took some time to take hold. There will be numerous meetings, conference calls and emails. Given time and care, however, comparability can reap rewards over the long haul for IOLTA's charitable purposes.

**Jane E. Curran** has been the executive director of The Florida Bar Foundation since 1982. She is also a member of the ABA Commission on IOLTA.

## Endnotes

- <sup>1</sup> The formal name of IOLTA in Florida is the Interest on Trust Accounts (IOTA) Program.
- <sup>2</sup> REPOs are short-term investment vehicles in which the bank sells

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## IOLTA News and Notes

### Revenue enhancement rule changes in Connecticut, Massachusetts and Mississippi

The past several months have seen the high courts in three states adopt amendments to IOLTA rules and guidelines with the goal of increasing IOLTA revenues. In June, the judges of Connecticut's Superior Court endorsed a proposal for an amendment adding a comparability requirement to the state's IOLTA rule. When it takes effect on September 1, the amended rule will require banks holding IOLTA deposits to pay no less on those deposits than the highest interest rate or dividend paid to a bank's own non-IOLTA customers when the IOLTA account meets the same balance or other eligibility qualifications. The Connecticut Bar Foundation, which operates the state's IOLTA

program, expects that this change will double its IOLTA revenue.

On May 18, the Supreme Court of Mississippi amended the state's IOLTA rule to convert the IOLTA program from opt-out to mandatory status. The new rule will require Mississippi attorneys who handle client funds to participate in IOLTA starting January 1, 2007. The move to mandatory is expected to boost IOLTA revenues. The new rule also contains comparability and other provisions that have the potential to further increase revenues as they are implemented. Mississippi will become the 32nd mandatory IOLTA program in the United States, and it is the fifth state to adopt mandatory IOLTA since 2004,

following Oklahoma, South Carolina, Utah and Indiana.

In late July the Supreme Judicial Court of Massachusetts ordered the revision of guidelines for the Massachusetts IOLTA Committee. The revisions are intended to "assure fair and reasonable interest rates" on IOLTA accounts and utilize comparability provisions similar to those adopted in Connecticut, Mississippi and elsewhere. The IOLTA committee has been authorized by the court to begin implementing the new requirements on or before January 1, 2007.

*Turn to page 3 for an article explaining IOLTA comparability requirements in detail.*

## Comparability

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securities held in its own investment portfolio to a customer with the agreement to repurchase them from the customer the next day at a price which equals the original investment amount plus interest. While the interest rates paid on repurchase agreements are higher than those paid on checking accounts, there is usually a high minimum checking balance—generally \$100,000—required. Repurchase agreements are not FDIC insured and modifications to IOLTA rules or regulations may be required to allow for this investment. The safety of the principal balance is addressed by requiring

REPO investments be backed by United States government securities.

- 3 In deciding whether to pursue a comparability requirement, IOLTA programs may wish to use the services of an outside consultant and obtain up-to-date information about the rates paid by individual banks to non-IOLTA customers.
- 4 In rules or official guidelines, many IOLTA programs have prohibited negative netting or defined checking activity and other fees that banks are allowed to deduct from IOLTA account interest. Comparability does not alter such rules or guidelines. IOLTA programs should continue to make clear to banks that they may pass along to attorneys and law firms certain fees, such as

wire transfers and other special services, which cannot be deducted from IOLTA account interest. Banks have always been able to recover IOLTA reporting or other account-related fees through a "maintenance" cost; they can continue to do so under comparability. IOLTA programs may wish to include language prohibiting negative netting and defining allowable fees in proposed rule amendments or official guidelines when seeking comparability.

5 In the experience of programs implementing comparability, banks generally have elected to pay REPO rates on existing IOLTA checking accounts, discounted for the loss of sweep fee income to the bank, rather than setting up a sweep to an overnight REPO.

## From the Chair...



by Joanne M. Garvey  
Chair of the ABA Commission  
on IOLTA

Readers of this column know that I often direct attention toward the IOLTA Workshops held during the ABA Midyear and Annual Meetings. There is good reason for this. The workshops are the only opportunity for the vast majority of IOLTA program directors, trustees and staff to gather in person to learn and trade information about IOLTA. Another reason is the consistent high quality of the workshops. Repeatedly, they have been the most energized, dynamic events I have attended during my tenure on the Commission.

The Summer 2006 IOLTA Workshops were no exception. The attendees arrived in Honolulu ready to focus and work during the two days of programming. The Joint Meetings Committee developed an excellent agenda that included several issues of peak interest for IOLTA programs. Among these topics was quality in legal services, aptly treated in a session that addressed the new ABA Standards for the Provision of Civil Legal Aid and the Legal Services Corporation's Performance Criteria. Another session, Strategic Approaches to Using Increased Income, wrestled with the dilemma facing the many

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## Planning and Implementing an Interest Rate Comparability Requirement

by Jane E. Curran

*Dialogue is pleased to present the second of two articles on IOLTA interest rate comparability requirements. The first, printed in the Summer 2006 issue, covered the basic definitions and concepts underlying comparability as it has been adopted in a growing number of states. This article focuses on planning for and implementing a comparability requirement added to the rule or legislation governing the operation of a state's IOLTA program.*

**T**he first article in this series described changes to IOLTA rules or legislation termed "interest rate/dividend comparability requirements." Under those changes, banks that choose to offer IOLTA accounts to their lawyer and law firm customers are required to pay interest rates or dividends on IOLTA accounts comparable to what the bank pays to its own non-IOLTA customers. But, the requirement applies only if banks already offer such higher rates, and then only on IOLTA accounts that meet the same minimum balance or other qualifications. Even then, banks do not have to take steps to set up IOLTA accounts as the higher rate products; most simply choose to pay the applicable rate on the existing IOLTA account.<sup>1</sup>

Comparability is not a one-size-fits-all approach to increasing IOLTA revenue. A number of IOLTA programs continue to benefit from successful collaborations and negotiations with banks that have resulted in higher rates paid on IOLTA accounts. Comparability may not be a good fit for IOLTA in those situations. But it does offer advantages in states where rates on IOLTA accounts linger well below those paid to comparable customers.

This article describes the key aspects of planning for and implementing an IOLTA comparability requirement, including collaboration with key stakeholders, implementation strategies, communications (including notice to banks and lawyers), and establishing time frames for bank compliance. Some of these issues will be addressed as they relate to the specific provisions of comparability requirements adopted by various IOLTA programs.

### Collaboration

It goes without saying that consultation with key leaders of the organized bar, grantees and other IOLTA and legal services supporters should take place when seeking beneficial changes to IOLTA rules or legislation. For interest rate comparability, expanding that consultation to key leaders in the banking community only makes sense.

When some IOLTA programs began planning to seek a comparability requirement, they collaborated with key banking leaders before the requirement was approved by the court or legislature. For others,

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## From the Chair. . .

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programs that have seen IOLTA revenues spike during the past 12 to 18 months. While increased revenue is unquestionably good news, it also generates opportunities, questions, and some amount of creative tension for organizations that are striving to provide the best stewardship of the new funds. Both sessions provided invaluable opportunities for attendees to gain insight, hear different perspectives, and discuss effective ways to address these developments.

Another timely topic was disaster preparedness. One year after Hurricane Katrina, this session focused on how an IOLTA program can prepare to lead and support the legal services community's response to disaster while handling the disruption of its own operations. This well-received session provided useful background for the Commission's visit to New Orleans in early November for its first meeting of the bar year. That meeting featured a visit with representatives of the Louisiana Bar Foundation to learn more about its efforts to continue IOLTA operations while helping to rebuild

Louisiana's legal services network.

Of course, revenue enhancement was part of the Summer IOLTA Workshops program as well. The attendance of the session on comparability requirements demonstrated that this topic has caught the attention of virtually every IOLTA program. The program provided excellent information, and included an engaging question and answer session. The interest of so many in comparability and the possibility of expansion to more states are very encouraging developments.

What was also apparent is that the recent focus on comparability represents a significant change for IOLTA: in how IOLTA programs conduct business, in how others perceive IOLTA, and in how IOLTA programs perceive themselves. Leaving aside the specifics of this change, I think it is important for the IOLTA community to recognize that a transformation is in motion. As in any case, this change is one that produces both anticipation and apprehension about the end results.

What is important for the IOLTA community is to continue to embrace the values underlying the IOLTA Workshops: the focus on issues of common interest, the exchange of observations and ideas aimed at improving IOLTA,

and the dialogue that is so important to working together. I look forward to resuming the dialogue during the Winter 2007 IOLTA Workshops on February 8 and 9 in Miami. I am confident that the Joint Meetings Committee is preparing another program of timely and inspiring sessions, and further opportunities for discussion. I hope to see you there.

\* \* \* \* \*

In this issue we welcome two newcomers to the Commission on IOLTA (see profiles on page 22.) Jon Asher has joined me as co-chair of the Commission this year, and brings with him a lifetime of experience in legal services and many years as a fixture in the IOLTA Community. I am delighted by the opportunity to serve with Jon, and I look forward to his contributions this year. I am also pleased that Gloria Wilson Shelton from Maryland—a state with a rich tradition of IOLTA leadership—has joined the Commission as well. I would be remiss if I did not acknowledge the departure of Margo Nichols, who left the Commission at the end of her three-year term in August. Margo is an IOLTA "lifer" and an exceptionally hard-working member of the Commission. We will miss her.

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## Comparability

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it made more sense to make personal contact with bank leaders after approval of the change, but as the first step of the implementation process.

In Florida, for example, the Florida Bankers Association commented on the draft proposed comparability requirement as part of the process for amending Florida's IOTA rule. In doing so, the association suggested language that made clear that, in determining the highest rate or

dividend available in compliance with the comparability requirement, bankers could continue to consider factors they generally take into consideration when setting rates for individual customers. These include the overall profitability of an account to the

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## Comparability

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bank, for example. That language made sense to The Florida Bar Foundation, but it further modified the draft rule to provide that the factors considered by a bank could not include that the account was an IOLTA account. In essence, an IOLTA account that qualifies for a higher rate based on balance or other qualifications set by the bank for its non-IOLTA customers could not be paid a lower rate simply because it is an IOLTA account. That further language made sense to the Florida Bankers Association.

In Massachusetts, the Massachusetts IOLTA Committee notified banks in the state before the proposed IOLTA guidelines were approved by the state's high court. In response, the Massachusetts Bankers Association asked to meet with the Massachusetts IOLTA Committee to discuss the proposal. That meeting resulted in some revisions to the proposed guidelines. Following the court's approval of the revised guidelines, the bankers association arranged a telephone training seminar involving the Massachusetts IOLTA Committee to introduce the revised guidelines. A large percentage of active IOLTA banks in Massachusetts participated in the call.

Collaboration and personal contact with bank leaders is fundamental to successfully implementing a comparability requirement. Bankers need assurance about what a comparability requirement is and is not. (It doesn't require banks to create new products for IOLTA, for example.) And, bankers want information about how vital increased IOLTA income is to addressing unmet civil legal needs and improving

### Alternative ways to comply

Some of the more recently enacted comparability requirements provide banks with something akin to a cafeteria approach to compliance. One possible method of complying is referred to as a "benchmark" provision. Under a benchmark provision, banks can comply by paying a specified percentage of the prevailing Federal Funds Rate which has been set to approximate the comparable rate. Another method allows a bank to satisfy the comparability requirement by agreeing with the IOLTA program to pay a rate (again, calculated to approximate the comparable rate) for a specified time period such as 12 months. These options are still based on the underlying principles of comparability—fairness in getting rates that are like those provided to a bank's own similarly-situated non-IOLTA customers.

*(Note: Where a program's rule allows for a benchmark rate, it needs to be clear to banks whether the identified percentage is gross or net of service charges and fees which the IOLTA program permits to be deducted from IOLTA account interest.)*

the lives of low-income individuals and families in the communities they serve.

#### Implementation strategy

The complexity, staff time, cost, and time frames to implement a comparability requirement are directly tied to what banks need to do to comply. So, in turn, is the implementation strategy. The simpler compliance is for the banks, the simpler and less expensive it is for the IOLTA program (including staff time). Likewise, the time frame needed for bank compliance is shorter as well.

Provisions that allow for benchmark rates or negotiated comparable rates (see the sidebar on this page on alternative ways to comply) are the simplest and least expensive to implement in terms of staff time, direct costs, and how quickly banks can be expected to comply. Concerns that these provisions may leave money on the table (by generating a lesser yield) may be offset by cost savings

in time and money for banks and for IOLTA programs of a simpler implementation process.

Earlier comparability requirements provide a single approach to compliance, but allow two ways to achieve it. Banks may use an actual higher rate product for the IOLTA account or, as most banks do, simply pay that higher rate on the existing IOLTA account.<sup>2</sup> Either way, banks are required to pay the highest interest rate or dividend generally available at the bank to its non-IOLTA customers when IOLTA accounts meet the same minimum balance or other qualifications, if any. To determine compliance, these IOLTA programs need reliable data from the bank or from an independent source to verify what rates a bank is paying on comparable accounts held by non-IOLTA customers.

Under this model, initial implementation and ongoing monitoring of bank compliance is more staff intensive, and costly

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## Comparability

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in terms of use of outside consultants (generally needed most during the initial stages of implementation), and requires the acquisition of independent data to verify bank interest rates. However, this model may result in rates that most closely track each bank's actual comparability and generate greater additional IOLTA income.

So, when IOLTA programs consider which provisions to include in an interest rate/dividend comparability requirement, the complexity, speed and cost of implementation need to be weighed against additional income to be gained.

Therefore, before drafting the requirement and planning for its implementation, IOLTA programs should address a number of matters, including:

- Ensuring that they have accurate data on the number and size of IOLTA accounts at each bank
- Documenting current IOLTA account interest rates and service charges and fees at each bank
- Determining whether the remittance data currently required from banks is sufficient to monitor compliance with a comparability requirement
- Deciding how frequently banks are required to raise rates on qualifying IOLTA accounts when they increase interest rates paid to comparable non-IOLTA customers
- Selecting a key financial indicator such as the Federal Funds Rate to trigger an assessment of whether rates paid under the comparability requirement should be rising<sup>3</sup>

- Last, but in no way least, defining "compliance" under the provisions of the comparability requirement. In states without benchmark provisions (such as a percentage of the prevailing Federal Funds Rate) or an interest rate agreed upon by the IOLTA program and a bank for a specified time period, there is a gray area in determining bank compliance. That's because banks include a number of factors beyond the account balance when setting rates for individual customers. As a result, even independent data about interest rates paid non-IOLTA customers won't always provide a definitive answer to questions about bank compliance. Assessing each bank's approach in light of all relevant factors is required.

### Staging

While implementation of an interest-rate comparability requirement must eventually cover all banks, it may be difficult to undertake regarding all banks at once. Implementation can be conducted in stages, starting with the five or 10 banks holding the largest amount of IOLTA-eligible funds. Those banks generally also have the greatest number of high-balance IOLTA accounts—those with average balances of \$100,000 or more. It is these accounts which generally will qualify for the higher, comparable interest rates. But, a comparability requirement also can apply to smaller accounts if a bank offers tiered-rate checking based on balance size.

### Notice

Who should be given formal notice of implementation of a comparability requirement, and when?

Audiences to consider providing notice include:

- Banks (that's a given)
- Lawyers and law firms
- Lawyer regulation staff
- Law office management advisory staff attached to the state bar or lawyer disciplinary agencies<sup>3</sup>

Providing notice and information about the comparability requirement to every bank at the start of implementation is the surest way to avoid a cascade of frantic calls evidencing misunderstanding of the nature of the comparability requirement. This is the case even if actual implementation will be staged based on the IOLTA account balances. The communication providing notice should, of course, clearly advise banks of what is expected of them and when. Communications should go to the chief operating officers of the banks with a copy to any contact person the IOLTA programs routinely deal with on remittance and reporting matters. The communication package should include information about how IOLTA income benefits the community.

In contrast, providing notice or information to individual lawyers and law firms isn't necessarily a given. While lawyers may be presumed to know of changes in ethics provisions affecting them, the comparability requirement is designed so that the resulting work is performed primarily by the IOLTA program and also by the banks. Some IOLTA programs have published information on their Web sites explaining that the program is working first with banks to assure smooth implementation and that no action will be required of most lawyers. Under

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## Comparability

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comparability requirements containing benchmark provisions, there is nothing for the lawyers or law firms to do if banks chose to comply in this manner. Even under comparability requirements without benchmark provisions, most banks have chosen to pay the comparable interest rate directly on the qualifying IOLTA checking accounts rather than require lawyers to go through the steps of establishing the higher rate product as the IOLTA account.

If banks choose to comply by actually establishing qualifying IOLTA accounts in REPOs or government money market funds, IOLTA programs will need to contact the affected lawyers and law firms at that time. The IOLTA program should obtain the necessary forms from the bank (generally a sweep agreement and investment selection form). The communication to the lawyers and law firms should advise the IOLTA account signatories that they are required to execute the forms because their bank has decided to comply with the comparability requirement in this manner.<sup>5</sup>

Whether or not lawyers and law firms are given general notice that a comparability requirement has been approved and is being implemented, the IOLTA program should proceed with placing articles in state or local bar newsletters and other communications forums to describe comparability and its benefits to legal services funding and other charitable programs supported by IOLTA.

### Establishing a timeframe for compliance

As with the implementation

## Getting help

The Commission on IOLTA/National Association of IOLTA Programs Joint Technical Assistance Committee and the Banking/Revenue Enhancement Committee have provided significant assistance regarding comparability to a number of states. To tap into these resources and the collective knowledge and experience of the IOLTA community, please contact:

- Commission Counsel Bev Groudine, 312-988-5771 or [bgroudine@staff.abanet.org](mailto:bgroudine@staff.abanet.org)
- Assistant Counsel David Holtermann, 312-988-5744 or [holtermd@staff.abanet.org](mailto:holtermd@staff.abanet.org)

strategy, the simpler the compliance provisions are, the quicker banks can be asked to respond and demonstrate their compliance. Even then, however, 90 days from the effective date of the requirement is probably the minimum timeframe. And, flexibility is paramount. Dennis Burnette, a member of the ABA Commission on IOLTA and a Georgia community banker, advised The Florida Bar Foundation that in dealing with banks, it should operate from the assumption that banks want to comply. That's good advice. Nevertheless, implementation will take longer than you like and will involve more telephone calls, meetings and emails than you expect. A good measure of humor, flexibility and assistance to banks will help assure successful implementation. After all, IOLTA programs themselves weren't implemented overnight.

### Recognition

IOLTA programs, their grantees, and especially the low-income individuals and families whose civil legal needs have gone unmet, have struggled with the negative impact of reduced IOLTA revenue

over the years. This fact has been especially frustrating when interest rates on IOLTA accounts were only a fraction of those paid to comparable non-IOLTA customers. But, banks were doing what they should do: making money for their shareholders. Comparability requirements now place qualifying IOLTA accounts in a more near-market position. Offering individual thanks and public recognition for those banks that do a good job of implementation is warranted and will reap rewards. While comparability requirements essentially are about revenue and fairness, good will counts!

### Conclusion

There is much more to planning for and implementing a comparability requirement, but there is no need to reinvent the wheel. Operating guidelines; manuals; notice letters to banks, lawyers and law firms; and analysis models all are available. Assistance for individual IOLTA programs can be accessed through the joint committees of the ABA Commission on IOLTA and the National Association of IOLTA Programs. In short,

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there are many resources to assist programs in pursuing comparability and IOLTA programs should not hesitate to tap into them.

**Jane E. Curran** is executive director of The Florida Bar Foundation and is a member of the ABA Commission on IOLTA.

### Endnotes

<sup>1</sup> This rate is discounted for the bank's loss of the sweep fee income.

<sup>2</sup> As noted in the first article of this series, an interest rate comparability requirement must permit IOLTA eligible funds to be held in higher-paying products such as daily bank repurchase agreements (REPOs) and government money market funds.

<sup>3</sup> With the exception of comparability requirements expressly tied to a percentage of the Federal Funds Rate, it is important to note that not every move in the Federal Funds Rate will result in banks increasing or decreasing rates paid to non-IOLTA customers and, therefore, comparable interest rates on qualifying IOLTA accounts. Furthermore, the Federal Funds Rate is only one factor in how banks set interest rates. Nonetheless, analyzing the

relative relationship between the Federal Funds Rate and a bank's REPO rates (for example) over a specified time period can help identify when to gather updated interest rate information from a bank for compliance monitoring.

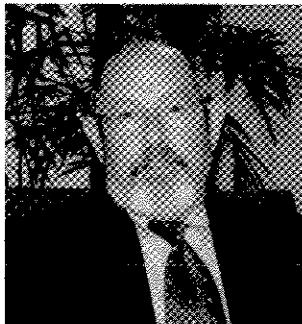
<sup>4</sup> Lawyers or law firms might contact regulatory and law practice management staff with questions about the comparability requirement or to confirm its existence.

<sup>5</sup> This communication would need to provide information and documents to assure lawyers and law firms that they are permitted to have IOLTA accounts in such products as set out in their jurisdiction's IOLTA rule or legislation.

## IOLTA News and Notes

**Jonathan D. Asher** and **Gloria Wilson Shelton** have joined the ABA Commission on IOLTA for the 2006-2007 bar year. Asher will serve as co-chair of the Commission alongside Joanne Garvey.

Asher is executive director of Colorado Legal Services. Previously, he was the long-serving executive director of the Legal Aid Society of Metropolitan Denver before it merged with other LSC-funded agencies in the state to form Colorado Legal Services in 1999. Asher sits on the board of the Colorado Lawyers Trust Account Foundation (COLTAF) and the Legal Aid Foundation of Colorado. An active member of the ABA, he most recently served on Immediate Past ABA President Michael S. Greco's Task Force on Access to Justice. He also is a former member of the Standing



**Jon Asher**

Committee on Legal Aid and Indigent Defendants, and the Standing Committee on the Delivery of Legal Services. Asher has been recognized for his work numerous times, and is a past recipient of COLTAF's Bruce

T. Buell Award for outstanding leadership in furtherance of the goals of Colorado's IOLTA program.

Shelton is principal counsel of the Courts and Judicial Affairs Division of the Office of the Attorney General of Maryland. In that capacity she serves as the chief legal advisor to Maryland's judicial branch. Shelton is an adjunct professor of law at the University of Maryland School of Law. Earlier in her career Shelton was a judicial clerk for a member of Maryland's high court, worked in private practice, and served in various counsel positions for local government departments before joining the Office of the Attorney General.

An active member of the ABA and state and local bar associations, Shelton currently serves as chair of the ABA Judicial Division's Standing Committee on Minorities in the Judiciary, and is chair-elect of the Judicial Division's Lawyers Conference. She is past president of the Alliance of Black Women Attorneys of Maryland.



**Gloria Wilson Shelton**



**TAB 6**

ATJC Priority Rating Sheet. June 2008.

1. The Needs Assessment Strategic Plan should be:

- Directed primarily toward the general public  
 Directed primarily toward the Bench, Bar, and Legislators  
 Done without regard to the audience, it's for everyone
- Broadly stated  
 More specifically stated

I would support SEI do a broad plan, with a more detailed plan to be developed over the next year with the assistance of the Director working with the subcommittees and providers

2. For each of the below statements, rate if this an appropriate stated goal of the Access to Justice Commission

**Review fund development options and select strategies to increase resources to meet civil legal needs in Nevada.**

Agree Disagree Too Broad Not appropriate for ATJC

**Secure additional funding for more staff for current legal service providers and to support additional services such as classes and clinics statewide.**

Agree Disagree Too Broad Not appropriate for ATJC

**Increase the options and manner in which attorneys provide services to low-income persons living in Nevada, including pro bono services, matching their interest and ability with unmet need.**

Agree Disagree Too Broad Not appropriate for ATJC

**Increase outreach and education to individuals and groups to help them identify what constitutes a civil legal need and how to access and provide assistance. Provide training and information on advocacy skills, the legal process and law-related issues they are likely to encounter.**

Agree Disagree Too Broad Not appropriate for ATJC

**Increase outreach and education to private attorneys to raise awareness of civil legal needs, the lack of access to justice in Nevada and ways they can contribute to improving access to justice.**

Agree    Disagree    Too Broad    Not appropriate for ATJC

**Utilize a mix of legal support strategies to include self-help, brief advice, increased community education and awareness and representation to maximize reach with the resources available.**

Agree    Disagree    Too Broad    Not appropriate for ATJC

**3. Rate whether you think the below issues should be part of the Commission's goals, and if so, priority you would attach**

Overarching Commission Goal?	No	Yes Priority →	High 1-3 yrs	Md 3-5 yrs	Low > 5 yrs
Increase funding					
Increase low or no cost lawyers working for Legal Services Providers					
Increase low and no cost lawyer hours (outside LSP)					
Concentrate on increasing pro bono lawyers in specific specialty areas (family, housing, etc)					
Establish more specialty clinics/classes					
Establish more self-help centers					
Concentrate on immigration pro bono assistance as a separate need area					
Increase law school clinics/pro bono service programs					
Establish a public education program targeting the public to help them understand the legal process, identifying resources (including LSPs), and helping them navigate those resources					

**4. The Commission previously identified its projects and objectives, independent of the Needs Assessment. They are listed below alphabetically. Please rate them:**

High (immediate goal) Medium (3-5 years), Low (> 5 years), or NONE

**501 (C) 3.** Complete application process and finalize

Develop conflict policy and scope of lobbying/legislative activities

H M L none

**ATJC PR efforts.**

H M L none

**Attorney recognition programs.** In particular continue to develop recognition for northern members, research and develop state-wide program(s)

H M L none

**Cy Pres funding.**

H M L none

**Delivery/Performance Standards for provision of civil legal aid services.**

H M L none

**Emeritus Attorney Program.** Once enacted, implement operating rules and develop comprehensive plan to solicit participation. Tap eligible out of state attorney resources.

H M L none

**Ghostwriting.** Response due to the Ethics & Prof. Resp. Committee Oct. 2008

H M L none

**IOLTA Comparability.** Develop relationships with Nevada banks to enforce Nevada SCR 217 (competitive rates). Evaluate if a comparability rule is viable for Nevada

H M L none

**Jury fees – NRS 355.210.**

H M L none

**Large law firm initiative.** Move forward, short term goal meetings in the North and South.

H M L none

**Legal Needs Assessment** Complete and implement strategic plan, advertise findings, apply findings to goal projects

H M L none

**Loan repayment assistance program.**

H M L none

**NLF and the ATJC.** Continue to define and develop the future relationship between NLF and the ATJC; discuss potential rule changes and investment strategies; identify best use of available resources

H M L none

**Rule Changes.** Eg. IOLTA/NLF/Unbundled & other legal services delivery

H M L none

**Public Interest Lecture Series.** Continue efforts to add and expand, consider new audiences and resources. Define goals and objectives of the series.

H M L none

**Rural legal services delivery**

H M L none

**Statewide fundraising.** Catalogue planned events, identify new resources

H M L none

**Website.** Director to expand SBN website to function as resource center for both the ATJC and the public

H M L none