



**Nevada Supreme Court Access to Justice Commission  
Quarterly Meeting**

**Date: Friday, July 10, 2009**

**Time: 1:00 p.m. - 5:00 p.m.**



*Three video-conference locations (phone will be set up in Las Vegas location):*

<p><i>Las Vegas</i> AOC Conference Room, 17<sup>th</sup> Floor Regional Justice Center 200 Lewis Ave., Las Vegas, 89101</p>	<p><i>Carson City</i> AOC Conference Room, 2<sup>nd</sup> Floor Supreme Court Building 201 S. Carson Street, Carson City, 89701</p>	<p><i>NEW- Reno</i> AOC Conference Room, 2<sup>nd</sup> Floor, #215 2<sup>nd</sup> Judicial District Court 75 Court Street, Reno, 89501</p>
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Conference Call info: 1-866-210-7083 1043736#

AOC Main number: 775-684-1700

**AGENDA**

1. **Approval of minutes 4.28.2009 (p. 2)**
  
2. **Equal Justice Conference (p.12)**
  - a. Chairs meeting
  - b. ABA Resource Center updates
  - c. ATJ Headlines
  
3. **Standing Committees (p. 67)**
  - a. Committee Projects and Roster Master
  - b. Committee Reports
    - i. Communications
    - ii. Legal Services Delivery
      - a. Statewide Pro Bono awards
    - iii. Development
    - iv. Executive Directors
  
4. **Nevada Law Foundation Update (p. 72)**
  - a. IOLTA campaign progress
    - i. Preferred banking; lawyer participation; Silver Ball update
  - b. First quarter IOLTA revenue summary
  - c. Banking interest and aggregate deposit historical table
  - d. Jury Fee proposal (NRS 38) follow-up
  
5. **Discussion items (p. 102)**
  - a. Rule Changes
    - i. IOLTA minimum standards (p. 103)
      - a. Benchmarks: Approval for preferred interest designation through December 2009
      - b. SCR 217 proposed language
    - ii. SCR 15: Commission Composition (p. 114)
      - a. Work-group report and recommendations
        - a. James Bradshaw replacing Cam Ferenbach as State Bar representative
      - b. Expansion of non-voting members (does not require rule change)
    - iii. RPC 6.1
      - a. 2008 Pro Bono statistics (p. 120)
      - b. ABA Supporting Justice II Report (p.134)
  - b. Senior programs
  - c. Rural Services
  - d. Nevada Legislative Update
    - i. Changes affecting delivery of services
    - ii. Foreclosure Mediation Program (p. 145)
      - a. Legal Service Providers foreclosure services updates
  - e. National Pro Bono week planning
  
6. **Commission Documents (p. 161)**  
2009 Calendar; Updated ATJC and Committee rosters and goals; organizational chart; Rule 15
  
7. **Other business (p. 170)**  
Next meeting **Oct 9, 2009**- please bring your calendars and plan on setting 2010 Commission dates

**TAB 1**



Nevada Supreme Court  
Access to Justice Commission  
State Bar of Nevada

Carson City: AOC Conference Room  
Supreme Court Building, 2<sup>nd</sup> floor  
201 S. Carson St.  
Carson City, NV 89701

Las Vegas: AOC Conference Room, 17<sup>th</sup> Floor  
Regional Justice Center  
200 Lewis Ave., 17th Floor  
Las Vegas, NV 89101

MINUTES draft  
Tuesday, April 28, 2009  
1- 5 pm

**Commission members in attendance:**

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

Abbott Kimberly  
Cooney Valerie  
Doherty Hon. Francis  
Elcano Paul  
Ferenbach Cam  
Johnson AnnaMarie  
Nielsen Ernest  
Vogel Sheri Cane  
Warden Tom

Marzec Kristina Executive Director, Commission

**Non-voting members in attendance:**

Candelaria Amber Director, Eighth Judicial District Family Law Self Help Center  
Etkins Lynn Legal Aid Center of Southern Nevada

**Members by phone:**

Gonzalez Hon. Betsy  
Puccinelli Hon. Andrew  
Steinheimer Hon. Connie

**Guests:**

Baucum Suzan Executive Director, Nevada Law Foundation  
Eglet Robert Vice-Chair, Nevada Law Foundation  
England Kathleen President-Elect, State Bar of Nevada  
Farmer Kimberly Executive Director, State Bar of Nevada

**Members unable to attend (excused absences):**

Desmond John  
Kandt W. Brett  
Thronson David

**1. Minutes 2.05.2009**

Approved with minor modifications.

## 2. Change in Nevada Legal Services Phone Number

Anna Johnson advised that Nevada Legal Services' toll free phone number was being changed today because a third party business (off ill repute) had hijacked the number. The new NLS toll free number will be posted on its website.

## 3. Discussion items

*Senior Law Programs.* Sugar Vogel reported the Division of Aging Services recently agreed to include legal services in the definition of "core essential services". The City of Las Vegas is pursuing with the Division a grant to fund the elder abuse investigation unit; status should be available in June. She is hopeful about recent conversations with the City opening a dialogue about supplanting, which will set the stage for program growth funding decisions as the economy recovers.

Ernie Nielsen advised the Senior Law Project is included in the Washoe County budget for 2010, and as such, will not be outsourced in the coming year. A county advisory group continues to seek input on a few initiatives. The Senior Law Project is to continue discussions on organizational issues and develop solutions that make sense for delivery of services. Also, in the past, the Project's funding was always outside general county funding. The senior program needs continuing to grow, and the entire Department of Senior Services budget is currently under funded. These issues will continue looking forward.

Anna Johnson reported that LSC increased funding in 2009, for NLS 200K. There are currently empty positions that can now be filled. Further, if the congressional funding for LSC is passed, it will be the largest increase in history and a huge boon for NLS programming. The Bill also would remove all restrictions on outside funding and some on LSC funding (as to class action suits and attorney fees). That section may pass easier than the \$435 million appropriation requested. LSC will make its final site visit to NLS for 2009 the week of May 18.

Kimberly Farmer reported the Board of Governors leadership was in Washington for ABA Law Day and supported the pending LSC legislative initiatives. There was strong support from Senator Reid and women's groups.

Paul Elcano reported no significant changes for Washoe Legal Services.

Valerie Cooney reported all funding sources for VARN are stable, no news to report at this time. A visit is expected from LSC regarding VARN's pro bono coordinator position.

Lynn Etkins reported Legal Aid Center of Southern Nevada is very busy, with dramatic increases in programs for foreclosure assistance. It received a grant from NCLC on Consumer Credit Services loan modifications.

Justice Douglas noted AB 149 (creating a foreclosure mediation program) seemed on track to pass this summer. This Commission should consider as a side issue the administrative support role that can be filled in assisting people with general information (do they qualify for the program as a baseline issue), and, preparing people who will be meeting with a mediator to have all the necessary documents available to most effectively utilize this resource.

Judge Puccinelli reported the AB 149 working group spent several hours working on a flow chart and formulating the attendant rules for the program. Forms are being developed. David Thronson stated the Boyd Law School is looking into ways to support the program.

*Standardized Service Provider Statistic Reporting.* Justice Douglas thanked the providers for the funding and service reports each has submitted at his request to date. The request for standardized service delivery reporting is to develop one set of statewide numbers. No one wants to impact what the providers are doing, but we need to have basic delivery statistics that show how the state is doing. Going forward with funding and resource requests on a state-wide level mandates that the Commission have available current statistics showing existing funding, allocation to specific services, and future needs based on that information.

In 2009 IOLTA funding was roughly \$1.83 million and dues check off was roughly \$151,000. As we attempt to expand our message to the public, it is important to recognize how the numbers will be received. We spend about \$15.39 per poor person if we look at the needs assessment, versus an average of attorney fees at about \$300 per hour.

*Marketing.* The second phase of the marketing program this year needs to tell our story. Justice Douglas noted that in the Rurals we found in our first committee meeting that we have more resources than we knew. NLS has regular monthly meetings that appear to have fallen through the communication gaps. These are hands-on, live attorney meetings available to the general public in the area. The providers should work together to provide resources for the press with good works and good outcome stories to get the interest of both potential funding sources and the general media. People want to see what the needs are and how the money is ultimately helping real people.

*Mandatory Reporting.* Both the State Bar (regarding mandatory docs in general) and the Commission (with regard to 6.1 only) have work groups looking at current 6.1 reporting and whether change might be warranted. Some topics discussed to date have been how the numbers are used; if attorneys are reporting accurately; whether attorneys understand the form; should the form be further limited; dues add on; and if aggregate or pooled reporting should be available for law firms. Any changes for the following year need to be submitted by August in the current year. We may be short on time for this year but look to a meaningful change for 2011.

Cam Ferenbach stated there are housekeeping changes needed in Rule 6.1, so this is probably a good time to address everything. For his part, he supports reporting as a firm.

Chief Justice Hardesty noted his position that we should increase the contribution to a mandatory \$100 per lawyer rather than the \$500 opt-out and that the large law firms were open to it in our large law firm meetings. The membership however has generally expressed reluctance in terms of any mandatory requirement. There does seem to be support for pooling or pro rate reporting of service hours. This past year it appears we had about a 3% drop in dues check off contributions, which given the economy is not too bad. However, as the economy improves this must improve. Government lawyers and transactional lawyers don't or can't generally go to court, so increasing the available options is supported.

Kimberly Abbott stated in the case of mandatory reporting, the historical position has been this is part of the rules of professional conduct and an *individual* responsibility. While all efforts to help lawyers increase service is laudable, we should be cautious of shifting the focus too much away from that cornerstone and the ABA Model Rule.

David Thronson opined requiring a written firm pro bono policy with some flexibility might be an option. Paul Elcano noted his position that we have mixed metaphors right now. The rule should be either entirely mandatory or entirely voluntary. We need to decide what's reasonable and move forward.

There followed extensive discussion on the history of pro bono reporting and the purpose behind mandatory requirements. Kathleen England noted that every time the form is changed, it does have a fiscal impact on the State Bar. Justice Douglas stated further Commission discussion should be had to determine what we really want and the efficacy of the current form. A great deal of time and effort went into enacting mandatory reporting and the current requirements. Lynn Etkins noted since enactment it has clearly increased awareness and volunteerism, and encouraged a dialogue about pro bono from the members.

Deferred action. Kimberly Farmer to provide the 2008 pro bono statistics as soon as available (which should be within the next few weeks, responses are still coming in and being entered). Kristina to run a line-item report on last year's pro bono reporting and start working with the pro bono coordinators to get a picture of how our current system is working. The Executive Directors will meet to discuss the Chief Justice's proposals regarding dues add on and other rule change issues.

Once that takes place, tentative working group: Valerie Cooney, Amber Candelaria, Suzan Baucum, Kim Abbott, David Thronson, a State Bar Designee, Chris Reade, Kristina, and at least one private bar representative. Revisit next Commission meeting.

*Expanding Commission Composition.* Rule 15 has some housekeeping needs. In addition, we need to consider expansion both through potential voting slots, and, non-voting appointments allowed under the current language. The Nevada Law Foundation should be added as a voting member. We need to consider self-help centers, the private bar, specialty bars, the federal bar and government lawyers generally, and law students/faculty in general. Justice Douglas appointed Lynn, Anna, and Kristina to a working group to report back next Commission meeting.

*Ghostwriting Standing Advisory Opinion.* The Court will be discussing at its *en banc* administrative conference in June the proposed revisions to Ethics Opinion 34 pertaining to ghostlawyering. The current Chair of the Ethics and Professional Responsibility Committee, Jeffrey Stemple, submitted the revised opinion including *inter alia* an exemption for the legal service providers (submitted jointly by General Counsel David Clark and the Executive Director Committee).

*Rural Services Delivery.* The first meeting of this committee was held this morning and will meet again in July or August. The AOC has done a great deal of work on a related project under ADKT 424 mandating technology in the courts and is also participating on this committee. Providing for infrastructure is the greatest hurdle and will take time and money. The pilot program is moving well, the AOC has launched the first handful of rural courts and installed the necessary hardware and will move on to phase two for a second batch of courts. We learned that in the rurals, people will wait weeks to meet with a live person if that is an option. Everyone wants a live body. Nevada Legal Services has been going out to various rural locations monthly with a live attorney, and that information needs to be disseminated.<sup>1</sup> At the next meeting resources will be pooled with a view towards putting together a rural community "available resources" information pamphlet that will be disseminated to the rural courts and made available on-line.

*Website.* Kristina reported on several available domain names and host service providers for the potential stand-alone Commission website to serve as the state-wide central resource. Anna offered to turn over NevadaLawHelp.org for this purpose (which NLS has already paid for and is supported through ProBono.net). Moved and approved. Administrative authority request will be submitted for Kristina. Once that is set up, tentative work group of Kristina, Jon Sasser of the Nevada Justice Association, and Amber Candelaria to expand content. Estimated 6 months for public launch.

*Statewide awards.* The statewide awards subcommittee gave its report and recommendations for honorees at the State Bar Annual Convention, as was approved at the last Commission meeting. After extensive discussion and debate, it was moved and approved to cancel this year's program and overhaul the entire selection and celebration process with a view towards a large, splashy event in 2010.

*Mortgage foreclosure.* Ernie reported on the efforts of the 16-person working group meeting for the past 6 weeks on AB 149. David Houston is the LACSN representative on this group. Process underway to solicit attorney interest as mediators. Also a huge component is the amount of legal assistance that will be needed for people who won't qualify.

*Self-help.* Amber reported that this Friday the Eighth Judicial District judges will be considering a filing fee increase for Hot Docs. The program will work in conjunction with Lexis/Nexus to automatically populate a large variety of forms based on user input on a questionnaire. Eventually e-filing will be an available. The Family Law Self-Help Center is being remodeled to add 12 kiosks. The program will be accessible from home or the kiosks. Plans are to start with the most popular forms with budgeting for all forms in the family law library. David Thronson reminded that the law school clinic needs to be updated with the new forms as they come on-line. Lynn Etkins noted she is now the point of contact on that issue.

Justice Douglas noted that as information is developed from the Access to Justice Campaign initiatives, public libraries must be included in the loop.

#### **4. Roadman to Justice Symposium**

Justice Douglas gave a brief overview of the symposium. What happens in Congress with LSC funding will obviously have a big impact on service delivery. Focus continues to be on unmet legal needs, cost efficient strategies, and legal information support services. Incorporating non-lawyer assistants as part of the solution is an interesting trend in national discussions. Large law firm furloughs was also a hot topic.

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<sup>1</sup> Schedule provided post-meeting and attached hereto.

Anna Johnson noted that LSC has a website set up for programs that want to bid on furlough lawyers and she agreed to forward the information to Kristina for distribution to the providers. The program offers a \$54K stipend benefits, and matching funding. Congress will decide the Casey Amendments (removing restrictions as mentioned *supra* on class actions/attorney fees) and increasing LSC funding to catch up with inflation (trying to get the program funding to pre-1982 relative equivalency).

*National Pro Bono Week.* Kristina and Justice Douglas urged the providers to immediately turn their attention the National Pro Bono week (last week in October) and asked for a commitment of at least one program per provider. Subject to be followed up at the next Legal Services Delivery meeting. Kristina directed everyone to the ABA website for ideas and noted she and Kim Abbott were available to discuss any ideas or questions in the interim.

## **5. Nevada Law Foundation Report**

Robert Eglet gave the Nevada Law Foundation report. The Silver Ball raised about \$92,500 in colleague pledges. It looks like the revenue from that event will be around \$68K when expenses are factored in. There were additional fundraising efforts and commitments in about \$400,000 in cash equivalency, plus 2-3 thousand hours in service pledges. They are still crunching the numbers to get the final tallies and will be following up with all the lawyers and firms who pledged. The IOLTA campaign has succeeded in getting about 20 law firms to move their IOLTA to preferred interest banks. Robert offered to make the media tape from the Silver Ball available for Pro Bono week, noting it can be easily edited as needs require.

Justice Douglas noted that the strategic planning meetings held in December and January resulted in a change in focus and direction that needs to be supported and continued.

Robert provided red-line proposed rule changes on SCR 216 (expanding the Nevada Law Foundation to provider for additional fund raising efforts, removing lifetime term limits), SCR 6.1 (regarding dues add on and other issues), and, NRS 38 regarding Jury Fees. There was extensive discussion on these proposals, particularly the NRS 38 amendments. Concern expressed on the impact his would have on indigent litigants in particular, and, the flow of the non-refundable fee directly to the Foundation. No action taken; deferred to next meeting with requests for more information on what research the NLF based the recommendations regarding NRS 38.

## **6. Executive Director's Report**

Paul reported that Executive Directors had one meeting and scheduled a second. Work remains in progress on a joint-proposal for an IOLTA percentage split formula. They remain hopeful they can come to an accord.

There has been some misconception in the legal community at large that the EDs took a position that other legally-related services should be defunded. For the record, it is important to clarify it was always the ED's position that those programs should remain funded, but that it should be done through fundraising and that in the interim of any transition to that end, existing funding levels would be maintained from IOLTA as in the past.

## **7. Reminder of 2009 Commission meetings**

July 10, 2009 1-5  
October 9, 2009 1-5

**Location:** videoconference by the AOC.

**Meeting adjourned at 6 pm.**





**NEVADA LEGAL SERVICES'  
2009 OUTREACH SCHEDULE**

**Senior Centers - January**

<u>Date</u>	<u>Location</u>
1/14/09	Overton, Nevada Jim Boyles Senior Center
1/14/09	Mesquite, Nevada Mesquite Senior Center
1/21/09	Alamo, Nevada Alamo Senior Center
1/21/09	Caliente, Nevada Olsen Senior Center
1/21/09	Ely, Nevada White Pine Senior Center
1/22/09	Elko, Nevada Elko Senior Center
1/23/09	Winnemucca, Nevada Winnemucca Senior Center
1/23/09	Fernley, Nevada Fernley Senior Center
1/26/09	Carson City, Nevada Carson City Senior Center
	Gardnerville, Nevada Douglas County Senior Center
1/26/09	Yerington, Nevada Yerington Senior Center
1/27/09	Fallon, Nevada Churchill County Senior Center
1/27/09	Hawthorne, Nevada Mineral County Care and Share
1/27/09	Pahrump, Nevada Pahrump Valley Senior Center

## February

2/11/09 Mesquite, Nevada  
Mesquite Senior Center

2/12/09 Ely, Nevada  
White Pine Senior Center

2/12/09 Eureka, Nevada  
Eureka Senior Center

2/13/09 Austin, Nevada  
Austin Senior Center

2/17/09 Carson City, Nevada  
Carson City Senior Center

Gardnerville, Nevada  
Douglas County Senior Center

2/18/09 Tonopah, Nevada  
Tonopah Senior Center

2/18/09 Laughlin, Nevada  
Laughlin Senior Center

2/18/09 Searchlight, Nevada  
Searchlight Senior Center

2/25/09 Pahrump, Nevada  
Pahrump Valley Senior Center

## March

3/11/09 Mesquite, Nevada  
Mesquite Senior Center

3/13/09 Amargosa, Nevada  
Senior Center

3/16/09 Carson City, Nevada  
Carson Senior Center

3/17/09 Carson City, Nevada  
Carson Senior Center

Gardnerville, Nevada

Douglas County Senior Center

3/18/09 Austin, Nevada  
Austin Senior Center

3/18/09 Eureka, Nevada  
Eureka Senior Center

3/19/09 Hawthorne, Nevada  
County Care & Share

3/19/09 Tonopah, Nevada  
Tonopah Senior Center

3/25/09 Pahrump, Nevada  
Pahrump Valley Senior Center

3/25/09 Las Vegas, Nevada  
Veteran's Stand Down

**April**

4/8/09 Mesquite, Nevada  
Mesquite Senior Center

4/13/09 Ely, Nevada  
White Pine Senior Center

4/14/09 Wells, Nevada  
Wells Senior Center

4/15/09 Carlin, Nevada  
Carlin Senior Center

4/15/09 Fallon, Nevada  
Fallon Senior Center

4/16/09 Carson City, Nevada  
Carson Senior Center

Gardnerville, Nevada  
Douglas County Senior Center

4/29/09 Pahrump, Nevada  
Pahrump Senior Center

In addition to the Senior Centers, Nevada Legal Services has conducted outreach the last Wednesday of each month at the NOTO Resource Center in Pahrump and the third Wednesday of each month at the Family Resource Center in Fallon.

The following is the regularly scheduled outreach that will take place for the rest of the year:

Mesquite Senior Center  
Second Wednesday Every Month

Pahrump Senior Center  
Last Wednesday of Every Month

Pahrump NOTO Resource Center  
Last Wednesday of Every Month

Ely Senior Center  
Once Every Month-Schedule Determined by Senior Center

Elko Senior Center  
Once Every Month – Schedule Determined by Senior Center

Carson City Senior Center  
Once Every Month-Schedule Determined by Senior Center

Tonopah Senior Center  
Once Every Two Months-Schedule Determined by Senior Center

Fallon Family Resource Center  
Third Wednesday of Every Month

Douglas County Senior Center  
Fourth Tuesday of Every Month

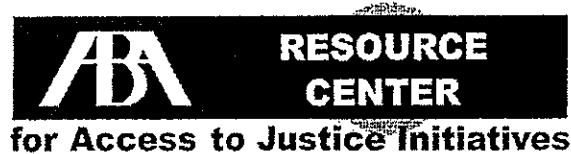
All other outreach is conducted as requested by the community organizations. NLS continually contacts various organizations in the rural counties, letting them know we would be happy to come out and conduct outreach.

**TAB 2**

00012

# Access to Justice Headlines 2008-2009

Reported at [www.ATJsupport.org](http://www.ATJsupport.org)



## New Access to Justice Commissions 2008-2009

- **Hawaii.** The Hawaii Access to Justice Commission, created by the Hawaii Supreme Court on May 1, 2008, and chaired by Associate Justice Simeon Acoba, has established ten committees, each chaired by one of the commissioners, on the following topics: funding civil legal services; increasing pro bono legal services; the right to counsel in certain civil proceedings; self-representation and unbundling; maximizing resources; language, cultural and other barriers; delivery of legal services; education, communication and conference planning; poverty alleviation; and law school relations.
- **Maryland.** The Maryland Access to Justice Commission, chaired by retired Court of Appeals Judge Irma Raker, held its first meeting on October 20, 2008, with New Hampshire Chief Justice John Broderick, Jr., as keynote speaker, and has been meeting on a regular basis since then. Executive Director Pamela Cardullo Ortiz joined the Commission from her prior position as Executive Director of Family Administration at the Administrative Office of the Courts.
- **Wyoming.** On December 16, 2008, the Wyoming Supreme Court ordered the creation of an eleven-member Access to Justice Commission, chaired by Supreme Court Justice E. James Burke. The Commission is charged with improving access to Wyoming's civil justice system by coordinating efforts to provide legal services to low-income people. The Commission includes representatives from tribal and state court judiciaries, the bar, law schools, and the state IOLTA program. Members of the Wyoming Access to Justice Task Force are ex officio members of, and act as an advisory committee to, the Commission. The new Commission has been meeting regularly since February.

- **Tennessee.** In conjunction with its Access to Justice campaign (see below), the Tennessee Supreme Court has created a new Access to Justice Commission, which met for the first time on April 29, 2009, under the leadership of Chair Margaret Behm. Chief Justice Janice Holder attended the meeting. Rebecca Rhodes, Access to Justice Coordinator at the Administrative Office of the Courts (a newly created position) will staff the Commission.
- **West Virginia.** In late 2008, the West Virginia Supreme Court of Appeals approved a proposal by incoming Chief Justice Brent Benjamin to create a new, nine-member Access to Justice Commission. The Commission is expected to create seven topical committees: self-represented litigants, pro bono services, access for working West Virginians, resource development, domestic violence, elder law, and disproportionate minority contact with the courts. Appointments to the Commission are pending.

### **Access to the Justice Programs in State Courts**

- **Massachusetts.** In late 2008, Massachusetts Chief Justice Margaret Marshall announced the reappointment of Chief Justice for Administration and Management Robert A. Mulligan for a five-year term, adding a new focus on access to justice to his role. In announcing the reappointment, Chief Justice Marshall affirmed the goal of access to justice for all, including self-represented litigants and those litigants with limited English proficiency.
- **New York Courts.** Judge Fern Fisher has been appointed to lead the New York State judiciary's statewide access to justice program, as well as serving as Deputy Chief Administrative Judge for the Courts inside New York City. Judge Juanita Bing Newton has been named Dean of the New York State Judicial Institute. The New York Court System has also released a 10-year report on "Expanding Access to Justice in New York."

### **Access to Justice Campaigns, Reports, Hearings and Events**

- **South Carolina Access to Justice Hearings, Report and DVD.** The South Carolina Access to Justice Commission completed a series of statewide hearings on barriers to civil justice with a final hearing at the state Supreme Court on November 5, 2008. South Carolina Public Broadcasting aired a television and radio show based on the hearings on December 11. Based upon recommendations resulting from the hearings, the state Supreme Court has already approved a divorce packet for self-represented litigants and signage for Clerk of Court's offices setting forth what clerks can and cannot do for self-represented litigants. The Commission has also completed an executive summary and a DVD presenting an overview of the statewide Access to Justice hearings held earlier this year. The DVD includes testimony from self-represented litigants, legal service attorneys and individuals with limited English proficiency. Copies of the DVD and report have been provided to all of the state's U.S. Congressional representatives. The Commission has also launched a new web site at [www.scati.org](http://www.scati.org).

- **Colorado ATJ Report and Recommendations.** In 2008, the Colorado Access to Justice Commission released *The Justice Crisis in Colorado*, a report and recommendations based upon the series of ten hearings held around the state in 2007 on access to justice. The report documents an enormous unmet legal need that places burdens on the courts and cannot be met by pro bono attorneys. Among the recommendations are to develop a four-year plan to increase funding for legal aid and increase salaries for legal aid lawyers, as well as to expand pro bono and services for self-represented litigants. The report has been submitted to the Legislature, the Supreme Court, Governor's Office and the State Bar.
- **North Carolina Report.** In June 2008, the North Carolina Equal Access to Justice Commission, chaired by Chief Justice Sarah Parker, released its initial report, which follows up on the Summit on Access to Civil Justice held in the fall of 2007, convened jointly by the Commission and the North Carolina State Bar Association. The report calls for increased state funding for legal aid programs, recognition of a civil right to counsel in certain critical cases, increased pro bono services, improved support for self-represented litigants, increased salaries for legal aid lawyers, and increased funding for programs for clients with limited English proficiency.
- **Mississippi ATJ Hearings.** On April 18, 2008, the Mississippi Access to Justice Commission launched the first of a series of hearings on access to civil justice, to be held in each U.S. Congressional District in the state. To date, hearings have been held in Gulfport, Greenwood, and Oxford, hosted by U.S. Reps. Gene Taylor, Bennie Thompson, and Travis Childers, respectively. Supreme Court Justice Jess Dickinson has served as moderator. Members of the listening panels have included Rodger Wilder, President of the Mississippi Bar, as well as judges, legislators, and local attorneys and community leaders. The Commission will use this testimony to develop recommendations to the Mississippi Supreme Court, state Legislature and the Mississippi Bar on legal aid for the poor.
- **Montana Access to Justice Hearings.** The Montana Supreme Court Office of the Court Administrator, the Equal Justice Task Force, and legal services organizations have co-sponsored a series of six statewide Access to Justice hearings, beginning in September 2008. Testimony offered to the nine-member listening panel at the first hearing, headed by Supreme Court Justice Patricia O'Brien Cotter, focused on the lack of legal resources available to low-income people, information on programs currently available, and ways to improve access to justice.
- **Texas Hearing on the Status of Legal Services.** The Supreme Court of Texas heard testimony on December 10, 2008, concerning the shortage of civil legal services for low-income people. Key topics included the impact of IOLTA revenue shortfalls and Hurricane Ike on the legal services delivery system. Advocates discussed possible funding initiatives, including the direction of cy pres funds and interest on campaign contributions to civil legal services providers. The Texas Access to Justice Commission presented a written report to the Court on the status of civil legal aid in the state. The hearing follows up on similar Texas Supreme Court hearings in 2000 and 2004.



- **Tennessee Bar “4All” Campaign.** In July of 2007, the Tennessee Bar Association, under the leadership of President Buck Lewis, launched a *Justice 4 ALL* campaign, following the model of the successful campaign in North Carolina. The campaign aimed at involving lawyers and legal organizations across the state in a four-pronged effort to expand access to justice through education, collaboration, participation and legislation.
- **Tennessee Supreme Court Access to Justice Campaign.** In December 2008, the Tennessee Supreme Court launched an Access to Justice campaign, which included the creation of a new Access to Justice Commission (see above). The campaign also included a series of public hearings around the state, a law firm pro bono recognition program, initiation of judicial efforts to promote pro bono, and support for the Tennessee Bar’s “4All” campaign. The final hearing was held on March 17, 2009. A topic addressed at the hearings was Legal Aid’s 50/50 campaign, aimed at raising resources to meet legal need in the state. Under 50/50, private attorneys agree to donate \$50 per month and 50 hours per year of pro bono services.
- **North Carolina Bar Association Initiatives Challenging Injustice, Promoting Access.** Upon taking office in 2008, North Carolina Bar Association President Charles L. Becton called upon each division, section, and committee of the organization to identify and respond to issues of injustice in the upcoming year, focusing on equal access to justice and law-related education. In addition, the NCBA continued a second year of its “4All” campaign.
- **District of Columbia Legal Needs Report.** On October 7, 2008, the District of Columbia Access to Justice Commission released *Justice for All? An Examination of the Civil Legal Needs of the District of Columbia’s Low-Income Community*. The report reviews legal needs in nine areas of law (consumer, education, employment, estate planning, family, public benefits, health/disability, housing, and immigration) and the legal services network’s capacity to meet those needs. It provides ten recommendations to improve the provision of civil legal services to the District’s low-income residents.
- **Texas Economic Impact Report.** In February 2009, the Texas Equal Access to Justice Foundation released an Economic Impact Report, which includes findings on the impact of legal aid and the potential of increased legal aid funding.
- **Maine Access to Justice Symposium.** Maine’s first biennial Access to Justice Symposium is scheduled for October 2, 2009 at the University of Maine Law School. Topics include the birth of legal services as part of the war on poverty; developing a new vision for civil legal aid in the state; racial and cultural diversity in access to justice; and “upstream intervention” to prevent the development of more serious legal problems through medical-legal partnerships, housing-related initiatives, and initiatives relating to low-wage workers.

## Public Awareness and Communications

- **Chief Justices and Court Administrators Access to Justice Resolution.** At their joint annual meeting in August 2008, the Conference of Chief Justices and the Conference of State Court Administrators adopted a resolution supporting court leadership in ensuring access to civil justice.
- **ABA Survey on Support for Legal Aid.** A telephone survey commissioned by the American Bar Association revealed that two-thirds of the respondents supported federal funding for non-profit organizations to provide legal assistance to Americans in need. The poll, released on April 20, 2009, was based upon the responses 1,016 U.S. residents over the age of 18.
- **Ohio Legal Aid Day.** On November 12, 2008, Chief Justice Thomas J. Moyer joined Governor Ted Strickland, the Ohio State Bar Association, and local bar associations around the state in celebrating the efforts of those who provide free legal services for low-income residents. Chief Justice Moyer highlighted efforts of legal aid societies and the pro bono bar in operating the Save the Dream Pro Bono Hotline, which provides assistance to homeowners facing foreclosure.
- **Iowa State of the Judiciary on Access to Justice.** Chief Justice Marsha Ternus focused on access to justice for low-income and other vulnerable Iowans in her State of the Judiciary address on January 14, 2009. She spoke on topics including the need to maintain legal aid funding in the face of increasing demand for these services, the need to increase pro bono efforts, and ways to serve self-represented litigants and limited English proficient individuals more effectively.
- **Washington State of the Judiciary on Legal Services Funding.** Chief Justice Gerry Alexander “implored” the Washington state legislature not to cut funding for civil legal services funding in his State of the Judiciary address on January 16, 2009.
- **West Virginia Incoming Chief Justice Remarks on Access to Justice.** In late 2009, state Supreme Court Justice Brent Benjamin spoke at a luncheon sponsored by Legal Aid of West Virginia of his plans to focus on expanding access to civil justice during his upcoming year as Chief Justice.
- **Massachusetts Chief Justice Address to ABA on Crisis in State Courts.** On February 17, 2009, Chief Justice Margaret J. Marshall gave an address at the ABA Midyear Meeting in Boston on the crisis facing state courts. Justice Marshall warned that that the impact of staff cutbacks and shortened hours would have a devastating impact on America’s justice system.
- **South Carolina State of the Judiciary on Access to Justice.** In her State of the Judiciary address to the General Assembly on February 25, Chief Justice Jean Hoefler Toal reported on past and present initiatives of the state’s Access to Justice Commission, including eight public hearings held around the state, judicial training, and a “simple” divorce packet.

- **Arizona Legal Services Day of Education & Awareness.** Arizona Legal Services gathered members of the legal aid community on March 4, 2009 for training on legislative advocacy and visits to representatives at the Arizona State Capitol on the importance of legal aid.
- **Texas Supreme Court Justice O'Neill on Threat to Legal Aid.** In April 2009, Texas Supreme Court Justice Harriet O'Neill's comments on the state of legal aid appeared in the Houston Chronicle. She wrote that the "Texas legal aid system is in danger of being decimated" as a result of declining IOLTA revenues and the increased demand for legal services in the wake of natural disasters such as Hurricane Ike.
- **Summer and Fall ABA *Judges' Journal* on Access to Justice.** The Summer and Fall 2008 issues of *The Judges Journal*, the publication of the ABA Judicial Division, are devoted to Access to Justice. The Summer issue includes an article by former Montana Chief Justice Karla Gray and Robert Echols, "Mobilizing Judges, Lawyers, and Communities: State Access to Justice Commissions," and remarks by New Hampshire Chief Justice John Broderick, Jr. given at the 2008 National Meeting of State Access to Justice Chairs (both available at [www.ATJsupport.org](http://www.ATJsupport.org)). The Fall issue includes an article on creating a culture of support for legal aid by Deborah Hankinson, former Texas Supreme Court Justice and Chair of the ABA Standing Committee on Legal Aid and Indigent Defendants; a case study of the District of Columbia Access to Justice Commission by Chair Peter Edelman; and a report on efforts to help self-represented litigants in Wisconsin by Chief Justice Shirley Abrahamson. Some articles are available to the public on line; the full issues may be downloaded by Judicial Division members.
- **Minnesota State Bar Association Resolution in Support of Legal Aid.** The Minnesota State Bar Association has adopted a resolution affirming its support for pro bono and public interest work. The resolution comes in response to a joint report by the U.S. Department of Justice Office of Inspector General and Office of Professional Responsibility finding that many lawyers were likely rejected for prestigious DOJ appointments due to affiliations with various public interest organizations or activities deemed politically suspect, including Minnesota legal aid and public defender programs. The Bar opposes attempts to define public service as ideological, and states its opposition to employment practices by government agencies that may discourage this work.
- **New Montana State Bar Equal Justice Award.** The Montana State Bar has created a new award to be given annually to a judge for efforts to expand access to justice. The award is named in honor of recently retired Chief Justice Karla Gray, who was its first recipient. This is the Montana State Bar's first award for judicial efforts.
- **Special Issue of *Washington State Bar News*.** The May 2008 issue of the *Washington State Bar News* was devoted to Access to Justice. Articles included an introduction by Chief Justice Gerry Alexander, "Access to Justice 101" by State Bar Association President Stan Bastian, and features on resource development, the state plan for civil legal aid, and pro bono.

- **Special Issue of *Wyoming Lawyer*.** The February 2009 issue of *Wyoming Lawyer*, the publication of the Wyoming Bar, was devoted to Access to Justice.
- **Arkansas ATJ Web Site for Legislators and Public.** The Arkansas Access to Justice Commission has launched a new web site, [EqualJusticeWatch.org](http://EqualJusticeWatch.org), aimed at providing citizens and legislators with information and resources to support equal access to justice in civil cases throughout Arkansas.
- **Consumer Federation of America Support for Legal Aid, Self-Help Centers, IOLTA Comparability.** Among the 2008 Policy Resolutions of the Consumer Federation of America are support for increased funding for civil legal assistance, court self-help centers, and IOLTA revenue enhancement, including comparability.

### Civil Right to Counsel

- **Boston Bar Civil Gideon Report and Pilot Projects.** In September 2008, the Boston Bar Association's Task Force on Expanding the Civil Right to Counsel released *Gideon's New Trumpet: Expanding the Civil Right to Counsel in Massachusetts*. This report describes the process for such an expansion: identifying basic needs, crafting pilot projects, and moving the projects to reality. It proposes nine pilot projects in the areas of housing, family, immigration, and juvenile law. In response to the report, the Boston Foundation announced that it will provide the Boston Bar Association a grant to support a pilot project to provide free counsel to low-income tenants facing eviction.
- **Model Right to Counsel Statute.** A task force of the California Access to Justice Commission has drafted the "State Basic Access Act," a model statute creating a right to counsel in civil cases where high-priority human needs are at stake, except where less expensive forms of assistance are sufficient to provide fair and equal access to justice. This new draft implements many of the policy choices reflected in the ABA Civil Right to Counsel resolution.
- **Civil Right to Counsel Web site and Newsletter.** The Civil Right to Counsel Leadership and Support Initiative has launched a new web site and newsletter at [www.civilrighttocounsel.org](http://www.civilrighttocounsel.org). The new site, which will be updated regularly, contains news of recent developments; descriptions of advocacy efforts and links to relevant documents; information about the need for a right to counsel in civil cases, the justice gap, the coalition, and how to become involved in its work; links to journal and newspaper articles; and much more.
- **Justice Earl Johnson Keynote on Civil Gideon.** California Justice Earl Johnson, Jr., (ret.) delivered the keynote address, "Three Phases of Justice for the Poor: From Charity to Discretion to Right," at California's *Pathways to Justice* Conference in June 2008.

- **New York Senior Citizen Right to Counsel Bill.** The New York County Lawyers Association has published a letter urging the New York City Council to pass a pending bill which would provide a right to counsel in eviction and foreclosure proceedings for low-income seniors. In addition, the letter urges the City Council to pass legislation establishing a right to counsel for all low-income people facing eviction or foreclosure.
- **Alaska Supreme Court Case on the Civil Right to Counsel.** In a pending case, the Alaska Supreme Court will consider whether the state constitution requires the provision of publicly funded counsel for an indigent party to a child custody dispute where the other party is represented by private counsel. The American Bar Association, Retired Judges of Alaska, and organizations providing free legal services have filed amicus briefs in support of the indigent mother's right to counsel.
- **New York State Bar Association Resolution on Civil Right to Counsel.** The New York State Bar Association has adopted a resolution affirming its commitment to provide free or low-cost civil legal services to the poor and its commitment to the civil right to counsel in cases involving basic human needs. The NYSBA also adopted a report on the civil right to counsel and urged the state legislature to enact laws to protect low-income seniors and people with disabilities facing eviction or foreclosure, and to extend the existing civil right to counsel to unemployment insurance claimants.

### **IOLTA (Interest on Lawyer Trust Accounts) Revenue Enhancement**

- **Unlimited FDIC Insurance for IOLTA Accounts at Participating Banks.** In response to comments from state bar leaders, the American Bar Association, the National Association of IOLTA programs, members of Congress, and others, unlimited insurance (which applied only to non-interest bearing accounts under an interim rule) has been extended to IOLTA accounts at participating financial institutions under the Temporary Liquidity Guarantee Program, heading off a potential disaster for IOLTA-funded programs.
- **IOLTA Comparability Rules.** Since May 2008, the ABA Commission on IOLTA has identified four states (Hawaii, New Mexico, Pennsylvania, and West Virginia) that have adopted IOLTA interest rate and dividend comparability rules. Including these states, 24 states have now adopted interest rate comparability. Comparability rules require that lawyers place their IOLTA accounts in a financial institution that pays those accounts the highest interest rate or dividend generally available at that institution to other customers when IOLTA accounts meet the same minimum balance or other qualifications. This strategy has proven to be highly successful in increasing IOLTA income. Several additional states are actively considering comparability rules. Other states are opting to negotiate favorable rates with banks.
- **Mandatory IOLTA.** In addition, two states (New Mexico and Rhode Island) have moved to mandatory IOLTA. As of May 1, 2009, there are 39 states/jurisdictions

with mandatory IOLTA participation, 11 with opt-out programs, and two with voluntary programs.

### Class Action Residuals

- **Massachusetts Class Action Residuals for Access to Justice.** The Massachusetts Supreme Judicial Court has adopted a new rule requiring that funds remaining after the payment of all class member claims be disbursed to non-profit organizations benefiting class members or similarly situated individuals consistent with objectives and purposes of the underlying causes of action, or to the Massachusetts IOLTA Committee to support access to the justice system for low-income residents.
- **Tennessee Rule Permitting Distribution of Class Action Residuals to Statutorily Created Fund.** The Tennessee Supreme Court has adopted a rule making it clear that class action residuals can be disbursed to the Tennessee Voluntary Fund for Indigent Civil Representation, previously created by statute.. Once the corpus of the Fund reaches \$1 million, the interest will be distributed to civil legal aid programs.

### Gifts Benefiting Legal Aid

- **North Carolina Bar Association Foundation Gift to Legal Aid.** On February 16, 2008, the North Carolina Bar Association Foundation voted to make a \$100,000 one-time gift to Legal Aid of North Carolina to aid in funding short falls and increasing demand for services. NCBA President Charles Becton cited the importance of support from the profession for legal services to the poor, urging North Carolina law firms and lawyers to step up pro bono efforts.

### Fees Benefiting Legal Aid

- **Arizona Pro Hac Vice Rule.** The Arizona Supreme Court has amended its rule allowing out-of-state lawyers to practice on a limited basis, increasing the pro hac vice fee by 15 percent. The additional revenue will be distributed by the Arizona Foundation for Legal Services and Education to fund organizations providing civil legal services.
- **Pennsylvania Attorney Assessment for Legal Aid.** The Supreme Court of Pennsylvania has issued an order increasing the annual attorney fee assessment by \$25, with proceeds directed to the state's IOLTA Board.
- **Proposed Washington Bar Assessment for Legal Services.** In April 2009, Washington State Bar Association President Mark Johnson proposed a \$70 temporary annual mandatory assessment on lawyers to fill the funding gap created by a severe decline in IOLTA revenues and state funding. The Washington Access to Justice Board has supported the proposal, which is currently pending.

## New or Increased State Legislative Funding for Civil Legal Assistance

**Final Report on the 2008 Session:** The 2008 state legislative sessions proved to be a mixed bag for civil legal aid programs. On the positive side, Alabama obtained a state legislative appropriation for the first time, and Alaska reinstated an appropriation after several years without one. This left only three states without any state legislative funding for legal aid. In other good news, legal services advocates in several states were able to obtain solid increases. However, in some states the economic downturn began to have an impact, leading to a reduction in funding. While the net dollar change this year was positive, the gain was driven primarily by one very large increase to offset IOLTA losses. (See list below for details.) Total state legislative funding is now \$216,000,000.

The 2008 legislative changes are as follows:

- **Alabama** – New appropriation of \$200,000.
- **Alaska** – New appropriation of \$200,000.
- **Colorado** – Appropriation increased from \$500,000 to \$750,000.
- **District of Columbia** – Appropriation increased from \$3,200,000 to \$3,600,000
- **Florida** – Appropriation reduced from \$2,600,000 to \$1,000,000.
- **Hawaii** – Appropriation reduced from \$1,832,000 to \$1,493,000.
- **Kentucky** – Appropriation reduced from \$1,500,000 to \$500,000.
- **Massachusetts** – Appropriation increased from \$9,664,000 to \$11,064,000.
- **Minnesota** – Appropriation decreased from \$13,300,000 to 13,180,000..
- **New Jersey** – Appropriation increased from \$16,385,000 to \$20,385,000; additional increase to \$29,685,000 to help compensate for IOLTA reductions.
- **New Mexico** – Appropriation increased from \$2,554,000 to \$2,704,000.
- **New York** – Appropriation reduced from \$12,600,000 to \$3,987,000.
- **North Carolina** – Appropriation increased from \$1,000,000 to \$1,502,000.
- **Pennsylvania** – Appropriation increased from \$2,646,000 to \$3,172,000.
- **Virginia** – Filing fee surcharge was increased from \$4 to \$9, which is expected to increase the total annual revenue from \$3,400,000 to \$7,600,000.
- **West Virginia** – Appropriation increased from \$150,000 to \$400,

**Early Report on 2009:** With the current economic crisis and most state legislatures confronting the need to cut budgets so as not to run deficits, legal services advocates in virtually all states with appropriations are fighting to maintain funding at current levels, and many expect to sustain some level of reduction. Legal services in states that utilize court fees and fines to fund legal services are not facing similar cuts.

There have been two bright spots. The **South Dakota** legislature approved a \$50 filing fee on requests for modification of final orders in domestic cases. The estimated revenue of \$100,000 to \$200,000 will go to legal services. This is the first state funding for legal services in South Dakota and means there are currently only two states without any state funding. The **Arkansas** legislature approved a circuit court filing fee increase of \$10 for legal services. The Arkansas Access to Justice Commission was instrumental in the passage of this legislation.

## Support for Self-Represented Litigants

- **South Carolina Self-Represented Initiatives.** The South Carolina Access to Justice Commission has formed a Clerk of Court work group to assist clerks in resolving ethical questions and improving access for self-represented litigants. The work group has developed a sign for posting in clerk's offices detailing what clerks can and cannot do to assist litigants. It has also prepared a survey on ethical issues for clerk's offices across the state, and is developing a manual on working with self-represented litigants. The Commission has recently completed a standardized divorce form packet for self-represented litigants, and plans to produce several additional standardized form packets.
- **New Mexico Self-Represented Initiatives.** On January 22, 2008, as recommended by the New Mexico Access to Justice Commission, the New Mexico Supreme Court adopted a rule defining the role of court staff that work with self represented litigants, and later approved a companion notice to the public which is to be posted in all state courts. The Commission has developed a rule and guidelines ("best practices") for self-help programs in courts statewide. A staff attorney at the Administrative Office of the Courts assigned to the Access to Justice Program continues to work with the Judicial Education Center to improve ongoing standardized training for court staff on what types of information they are obligated to provide the public under the new rule. The training will be available for paralegal program students and library staff who are expected to provide the public with legal information. The Commission is also developing standardized plain language family law forms. When approved, English/Spanish forms should be available through the internet, as well as through courts and legal service providers.
- **Maine Self-Represented Litigants Task Force Report and Implementation.** On March 13, 2009, the Maine Self-Represented Litigants Task Force released its final report. The Task Force was created upon recommendation of the long-term planning process launched by the Justice Action Group. Following up on principles stated in the report, JAG Chair Justice Jon Levy and Chief Justice Leigh Saufley convened a brainstorming meeting involving the technology coordinators of the court system and Pine Tree Legal Assistance, the state law librarian, and other representatives of the courts, libraries, and legal aid and pro bono programs, with the goal of developing a virtual courthouse-based assistance project.
- **Self-Help in New York Courts.** The New York State Court's Access to Justice Program has developed new DIY forms for self-represented litigants available at <http://nycourthelp.gov/>. The program has also created an attorney-assisted self-help initiative for state residents engaged in foreclosure, personal debt, landlord-tenant, and other lawsuits. Lawyers in the new Volunteer Attorney Program will be provided training to assist self-represented litigants with petitions and other court paperwork, to advise them about what might happen in court and to help them interpret orders from courts.



- **California Judicial Task Force on Family Law.** The California Judicial Council has created a Task Force on Family Law, chaired by Appeals Court Justice Laurie Zelon, charged with creating new family law rules. Chief Justice Ron George, noting that the vast majority of family law cases involve self-represented litigants, said that the task force was created to develop rules that are easy to understand and comply with, and that preserve and increase access to justice while allowing cases to be handled as quickly and fairly as possible.
- **California Guidelines for Self-Help Centers.** The California Administrative Office of Courts has promulgated *Guidelines for the Operation of Self-help Centers in California Trial Courts*, applicable to all court-based self-help centers, whether operated by the courts or another entity. The guidelines implement a new rule that specifies that support for self-represented litigants as a core function of the courts.
- **New York Seminars on Pro Se and Plain Language.** Court personnel across New York participated in plain language training sponsored by the Deputy Chief Administrative Judge for Justice Initiatives in mid-2008. The goal was to equip key personnel to evaluate, adapt and create documents and other resources to improve readability and access. Also, the New York Unified Court System is sponsoring judicial training on evolving jurisprudence and techniques for cases involving self-represented litigants
- **Maine Rule on Announcing the Availability of Free Legal Services in Court.** On February 11, 2009, the Maine Supreme Court adopted an amendment to the rule on solicitation, allowing lawyers to announce the availability of free representation to self-represented litigants through specified legal assistance programs.

### **Pro Bono Development and Support**

- **New Mexico Mandatory Pro Bono Reporting.** The New Mexico Supreme Court has adopted a new pro bono rule, which includes a mandatory reporting requirement. The rule also sets an aspirational goal for pro bono service or alternatively, a financial contribution to a legal aid program, and includes a table for determining the appropriate minimum financial contribution when the aspirational goal is not met.
- **Ohio Local Pro Bono Committees.** The Ohio State Bar Association has formed a task force to establish a statewide network of locally based pro bono committees, one in each judicial appellate district.
- **Colorado Supreme Court Pro Bono Honors.** The Colorado Supreme Court has recognized the law firms, solo practitioners, and in-house counsel who achieved the goal of providing 50 hours of pro bono service per lawyer set by the Supreme Court's Pro Bono Commitment Program. The program was established by the Supreme Court and the Colorado Access to Justice Commission. This year the number of firms and attorneys meeting the goal doubled over last year.

- **Idaho Pro Bono Commission.** By joint resolution, the Idaho Supreme Court, U.S. District Court for the District of Idaho, and the Idaho State Bar have created the Idaho Pro Bono Commission to work with the judiciary, private firms, and government lawyers to expand legal help for low-income people. Members of the Commission include Idaho Supreme Court Justice Jim Jones, federal magistrate Candy Dale, Chief Deputy Attorney General Brian Kane, Thomas Saldin, general counsel of Idaho Power, and senior/managing partners of several of Idaho's most prominent local and regional law firms, as well as representatives from legal aid programs, the state bench, and the Idaho State Bar.
- **Maine Standing Committee on Pro Bono and Public Service.** In March 2009, the Maine State Bar Association, in partnership with Justice Action Group, launched a new Standing Committee on Pro Bono and Public Service. The Committee is charged with developing and coordinating donations of pro bono time and legal expertise and will publish a column in the MSBA Journal on noteworthy pro bono efforts.
- **California Pro Bono Summit.** A strategic planning event on pro bono was co-sponsored on November 6 by the State Bar's Standing Committee on the Delivery of Legal Services and the Public Interest Clearinghouse. Over sixty law firm pro bono partners and coordinators participated in sessions on family law, rural delivery, coordination and best practices. Working groups were established to implement the ideas generated at the Summit.
- **Louisiana State Bar Association ATJ Pro Bono Summit.** Louisiana State Bar Association President Beth Foote hosted the LSBA Access to Justice Pro Bono Summit on January 9, 2009. The one-day agenda, aimed at increasing pro bono activity in the state, was facilitated by staff from the ABA Center on Pro Bono.
- **North Carolina 4ALL Statewide Service Day.** The North Carolina Bar Association and the North Carolina Bar Association Foundation hosted their second annual 4ALL Statewide Service Day on March 6, 2009. The ask-a-lawyer event was held at five call centers around the state.
- **Nevada Emeritus Rule.** In June 2008, the Supreme Court of Nevada adopted a new rule permitting inactive attorneys to practice law through Emeritus Attorney Pro Bono Programs assisting low-income clients at approved legal services providers.
- **New Mexico Limited Practice Rule.** New Mexico's Supreme Court has adopted a rule allowing emeritus attorneys to represent legal aid clients without maintaining active status with the state's bar. The rule also allows out-of-state attorneys to work in legal aid programs for two three-year terms without taking the state bar exam.
- **North Dakota Pro Bono Rule.** In March 2009, the North Dakota Supreme Court adopted a rule allowing attorneys admitted in any jurisdiction limited authorization to practice law within the state as an unpaid volunteers with approved legal services organizations.

- **Tennessee Pro Bono Amendments.** The Tennessee Supreme Court has adopted three amendments to its rules that will encourage more lawyers to provide pro bono legal services to needy Tennesseans. One provides that attorney may receive one CLE credit for every five hours of pro bono work; another encourages attorneys to do 50 hours of pro bono work annually; and the last allows for limited-scope representation in which the attorney providing services need not become the attorney of record.
- **National Pro Bono Celebration.** A national week-long celebration of pro bono is scheduled for October 25-31, 2009. Advisory Committee members for the event include state Bar Presidents, state Chief Justices, past and present ABA leaders, law school Deans, law firms, and the ABA Standing Committee on Pro Bono and Public Service. Thirty law firms, bar associations and pro bono programs across the country have signed up to host events thus far.
- **ABA Medical-Legal Pro Bono Partnerships Project.** The ABA Standing Committee on Pro Bono and Public Service, the ABA Health Law Section, the AIDS Coordinating Committee, and the ABA Center on Children and the Law have jointly launched a national medical-legal partnership pro bono support initiative. Kelly Scott joined the ABA Center for Pro Bono as staff attorney for the project on December 1, 2008.

### **Legal Aid Recruitment and Retention**

- **Report on Legal Aid Salaries.** According the 2008 Public Sector and Public Interest Attorney Salary Report issued by the National Association for Law Placement (NALP), civil legal aid lawyers are still the lowest paid in the profession. The median entry-level salary for a legal services attorney is \$40,000; at 11-15 years of experience, the median is \$60,000. The 2008 Associate Salary Survey, a companion report by NALP, shows that the median salary for a fifth-year associate ranges from \$99,000 to \$183,000 depending on firm size.
- **Texas Student Loan Repayment Assistance Program.** Beginning in June 2008, all eligible legal aid attorneys in Texas who applied to the Texas Student Loan Repayment Assistance Program are receiving student loan assistance, thanks to the State Bar of Texas and the Texas Access to Justice Foundation. The Foundation has taken over administration of the program, which was created by the Texas Access to Justice Commission in 2003, and is supplementing the funding contributed by the State Bar to make it possible for all eligible applicants to receive assistance.

### **Foreclosure Defense Projects**

Courts, bar associations, legal aid providers, and other stakeholders in states around the country have been working together to respond to the crisis in foreclosure of subprime loans and assist homeowners in finding ways to remain in their homes.

***Examples of volunteer counseling and representation programs include:***

- **Florida.** The Florida Bar, with funding from the Florida Bar Foundation, has created *Florida Attorneys Saving Homes*. The primary objective of the program is mortgage renegotiation. Florida Legal Services, a partner in the program, operates a hotline and screens cases. The program draws heavily on volunteers from the Bar's Real Property, Probate and Trust Law Section, Business Law Section and Young Lawyers Division.
- **California.** The California State Bar has mobilized efforts to establish a central repository for public resources and pro bono opportunities for foreclosure assistance. With assistance from the California Bar Foundation and State Bar staff, the Public Interest Clearinghouse has developed a foreclosure resource web site for attorneys and the public.
- **Alabama.** In response to the mortgage foreclosure crisis, the Alabama State Bar and Legal Services Alabama have launched the Alabama Foreclosure Campaign. Homeowners facing foreclosure may call a statewide hotline to speak with an attorney advisor about the foreclosure process and to receive legal assistance including advice and representation in negotiation and litigation, where necessary.
- **New York City.** The New York City Bar Justice Center has partnered with the Federal Reserve Bank of New York to form the *Lawyers' Foreclosure Intervention Network* (LFIN). The program's primary goal is to help distressed homeowners modify their mortgage loans to continue to service the debt and stay in their homes. When LFIN organizers found that few large law firm associates were able to volunteer due to conflicts, they worked with the City Bar's Committee on Professional and Judicial Ethics on the issue. As a result, some large financial institutions have granted limited conflict waivers to enable large law firm volunteers to assist in the effort.
- **North Carolina.** The North Carolina Bar Association Foundation and the Bar's Real Property Section have partnered to help train volunteers under the *North Carolina Foreclosure Prevention Project*, created by emergency legislation. Lawyers, law students and paralegals have been recruited to provide "Red Flag Review" of subprime loans before foreclosure to determine if there has been any violation of lending or consumer protection laws. Volunteers are encouraged to consider keeping the cases and working with the homeowner toward a final resolution.
- **Ohio.** Ohio's *Save the Dream* program, supported by the Ohio Supreme Court, Ohio State Bar Association, and numerous states agencies and legal aid programs, provides information and resources to homeowners experiencing or expecting to experience foreclosure. It also provides Ohio courts with a model mediation program to encourage the settlement of cases through negotiation rather than the filing a foreclosure case. Volunteer lawyers can provide full case representation or limited representation. State Bar Association President Robert F. Ware joined Ohio Supreme Court Chief Justice Thomas J. Moyer and Ohio Attorney General Marc Dann in asking each member of the Bar to consider volunteering to assist distressed homeowners.

- **Maryland.** The Maryland State Bar Association and several partners have formed the *Foreclosure Prevention Pro Bono Project*. The Project has made foreclosure prevention and homeowner loss mitigation its primary goals. Lawyers may volunteer to provide direct representation, brief advice and counsel, or representation to a non-profit housing counseling agency. Court of Appeals Chief Judge Robert M. Bell sent a written call for volunteers to each member of the Maryland State Bar Association.
- **Washington.** The Washington State Bar Association has launched its Home Foreclosure Legal Aid Project. The WSBA will provide statewide development, training and coordination of attorneys who have agreed to provide pro bono representation to homeowners with legal problems related to foreclosure

***Examples of court-based mediation programs include:***

- **Philadelphia.** The Court of Common Pleas of Philadelphia County instituted a residential mortgage foreclosure diversion pilot program in 2008. The Diversion Program creates an opportunity for a distressed homeowner to work with the plaintiff in a mandatory, court-supervised conciliation conference. The plaintiff is required to explain in writing to a homeowner his or her rights under the Diversion Program. In addition, plaintiffs must identify owner-occupied cases to the court.
- **Ohio.** Following the recommendations of the Ohio Foreclosure Prevention Task force, Ohio courts and other foreclosure stakeholders developed a model foreclosure mediation program that encourages courts and stakeholders to consider mediation as an effective way of resolving foreclosure actions. The Mediation Program provides background and materials covering relevant rules and statutes, as well as mediation procedures. Model forms and formal training are also available under the program.
- **New York.** In mid-2008, the New York State Unified Court System established a statewide Foreclosure Conference Program to help settle residential foreclosure cases. The program required plaintiffs to provide homeowners with notice of their right to a court conference and to explore out-of-court settlements or other arrangements that might enable them to keep their homes. Before the State Unified Court System finalized a pilot version of the Conference Program, the New York State Assembly amended existing real property laws and enacted new civil procedure laws that have the same effect. These measures were signed into law by New York State Governor David Paterson and took effect in September.
- **Maine.** On March 31, the Maine Supreme Court created the Judicial Branch Commission on Foreclosure Diversion to provide parties to foreclosure proceedings relevant information and an effective alternative dispute resolution process. The Commission is made up of representatives of the executive, legislative, and judicial branches of Maine state government, as well as representatives of interested stakeholder organizations, individual attorneys, and others.





## ATJ Commissions and Resource Development

By Meredith McBurney, Resource Development Consultant for the American Bar Association's Resource Center for Access to Justice Initiatives and Management Information Exchange<sup>1</sup>

*How do we generate enough money to provide quality civil legal assistance to all those in need?*

*How do we generate enough money annually to simply keep programs in every state moving forward, increasing funding at a rate above inflation?*

The first of these sentences poses a question related to accomplishing our mission, and is very aspirational. The second sentence should be our absolute mini-

imum standard and should be achievable, but has not been to date.

Successful resource development is a continuing and complex process. Those who have had significant success generating resources from a variety of sources know it

requires developing partnerships with the highest levels of the bar, the judiciary, government and legal services providers.

The Access to Justice (ATJ) Commission movement has been built on the premise that bringing these powerful forces together will achieve increases and improvement in all areas, but increased resources has been a major focus. It is not an accident that half of the consulting time for the ATJ Resource Center is devoted to supporting resource development work.

### So what has been achieved?

ATJ Commissions have led or been effective supporters in successful efforts to increase resources. In some states and in some instances, they have been THE key to success. The area of greatest success, not surprisingly, has been with state legislative funding — ATJ Commissions, with their broad, statewide leadership coalitions, are ideal entities for the various work required to obtain and increase state legislative funding.

ATJ Commissions have also had a positive impact on increasing resources through IOLTA, private bar campaigns, attorney registration fees, *pro hac vice*, and *cy pres*.

Here are a few examples.

### ATJ Commissions have played a major role in increasing state legislative funding:

■ **New Mexico:** The New Mexico ATJ Commission was instrumental in obtaining a \$2,500,000 state legislative appropriation, which more than doubled the amount of state funding and moved New Mexico into the top ten states in the country in terms of state funding. In her article on page 13, Sarah Singleton describes how the New Mexico Commission held hearings around the state, with local judges willingly participating at least in part because the Commission was a Supreme Court-created entity.

The hearings provided the underpinnings for a report to the Supreme Court which documented the need for legal assistance to the poor, and then led to the major campaign to increase legislative funding. Getting all the major stakeholders involved and committed to achieving the goal would likely not have been possible without the ATJ Commission.

■ **The District of Columbia:** In 2006, the D.C. ATJ Commission obtained \$3,200,000 in funding from the D.C. City Council, the equivalent of the state legislature for our nation's capitol. This first funding ever from the D.C. Council was possible because of the work of the ATJ Commission, established in 2005, just over one year before. Peter Edelman, chair of the Commission, led the funding campaign. Commission members decided that a successful proposal would need to be targeted to

specific services, and they organized “listening sessions” to determine the most critical needs. There was then an extensive education campaign with the thirteen members of the Council, led by Commission members and staff. One of the initiatives funded was a loan repayment program, which the D.C. Council passed in 2006, at the urging of the Commission and others. The initial funding for FY 2007 was renewed for FY 2008.

**Low hanging fruit — quick results in states with new commissions and limited resources:**

Some very low-funded states have created ATJ Commissions in recent years and have quickly reaped the benefits:

- **Mississippi:** Mississippi, which has been one of the lowest funded states, has led the country in percentage increase of non-LSC funding for the past two years. The funding successes here began before the ATJ Commission was even formed, but, as noted on page 15 (examples of ATJ Commissions), they grew out of the work to engage the Supreme Court and State Bar that led to the creation of the Commission in 2006.

The Supreme Court began to recognize the need and approved a *pro hac vice* fee for legal services in 2003. In 2004, Supreme Court Justice Jess Dickinson attended the Equal Justice Conference and National Meeting of ATJ Chairs, and he quickly became a strong advocate for improving access to justice in Mississippi. Through his leadership, the Supreme Court implemented a mandatory *pro bono*/contribution reporting rule in 2005, which generated \$257,000 in its first year. With strong support from the Supreme Court and the State Bar, a filing fee surcharge passed the legislature in 2006, and in its first year raised \$436,000. There had been numerous failed efforts to secure state funding in the past; only this combined effort from the top bar and court made success possible. The most recent successful change occurred in 2007, when the Supreme Court revised the IOLTA rule, converting the program from opt-out to mandatory and authorizing comparability. Although implementation of comparability has not yet begun, IOLTA is already generating four times as much revenue for legal services.

- **Alabama:** It is likely that Alabama, another very low-funded state, will follow in the footsteps of Mississippi. The Alabama ATJ Commission was

established in 2007, and to date has played a major role in two successful statewide funding initiatives. The Alabama Supreme Court approved an increase in its *pro hac vice* fee; the increase of \$200 will go to fund civil legal services, generating approximately \$120,000 annually. The Court also amended the IOLTA rule, changing Alabama’s program from opt-out to mandatory as of January 1, 2008. This change is expected to generate significantly more income for IOLTA, as it has in other states. The ATJ Commission is now leading the effort to obtain state legislative funding for Alabama. Alabama received \$75,000 from a special fund of the Governor in 2007; they are now seeking to join the forty-five states that have on-going state funding for legal services.

**More established commissions led the way:**

- **Maine:** The Maine Justice Action Group (JAG), one of the first commissions created, has a history of successes. In the area of funding, the JAG was responsible for the Campaign for Justice, a combined, statewide private bar campaign that in three years made Maine the second highest ranking state in per attorney giving to civil legal services. This campaign was the outgrowth of a resource development planning retreat sponsored by the JAG in 2004. The plan called for the development of a private bar campaign, which would then be used as a catalyst to stimulate new additional funding from the state legislature. The state legislative campaign was launched the year after the private bar campaign, and led to a solid increase in revenue from court fees and fines.

- **Texas:** Since it was founded in 2000, the Texas ATJ Commission has provided strong and effective support to many resource development efforts in this huge, low-funded state with over 3,000,000 poor people. Several efforts have involved state funding, including obtaining \$2,500,000 annually from the Attorney General’s budget to provide services for victims of crime, the addition of a \$1,500,000 state appropriation in 2005, and a new allocation in 2007, for legal services for victims of sexual assault from a new fee on sexually-oriented businesses. Commission members also worked on the adoption of a *pro hac vice* fee for legal services and a bar dues add-on. They helped smooth the waters for the resolution of disagreements over a \$65 manda-

*Continued on page 51*



⊙ ATJ COMMISSIONS AND RESOURCE DEVELOPMENT  
*Continued from page 35*

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tory dues fee, half of which goes to legal services. Finally, they were very involved in the successful effort to obtain an IOLTA comparability rule in 2006, which is generating millions of additional dollars for legal services.

- 1 Meredith McBurney, a consultant since 1997, specializes in resource development for legal services and other advocacy organizations. She currently serves as Resource Development Consultant for the American Bar Association's Resource Center for Access to Justice Initiatives and Management Information Exchange. From 1981 to 1997, she was the Executive Director for Colorado's IOLTA program and statewide fundraising organization. Before that, she was the administrator for Colorado Rural Legal Services. Meredith may be reached at [meredithmcburney@msn.com](mailto:meredithmcburney@msn.com).

**Court Fees and Fines and State Appropriations by State\***  
through end of 2008 legislative sessions, final version done 3/1/09

State	Court Fees and Fines	State Appropriation
AL	None	\$200,000; initiated 2008
AK	None	\$200,000; initiated 2008
AZ	None	\$1,253,000 to provide legal services to women with children who are victim of domestic violence. \$63,000 to fund elder law hotline.
AR	\$342,000. \$20 to "reopening" fee for civil cases, initiated 2005.	None
CA	\$5,401,000; initiated 2005	\$11,009,000; initiated in 99-00.
CO	None	\$750,000 for 2008-09; initiated 1999, eliminated 2004, restored 2005, increased 2008.
CT	None	\$1,000,000 in 06-07; initiated 2005
DE	None	\$190,900 from Grant-in-Aid program for general legal services; \$50,000 in general appropriation for elder law. Contingency appropriation of \$275,000 for 06-07.
DC	None	\$3,600,000 from DC City Council, the equivalent of a state legislature; initiated in 2006, increased 2008.
FL	As of 2004, local filing fees are no longer used for legal services, but state law requires counties to fund.	\$1,000,000 for 08-09
GA	For pro bono in 3 counties only; total is \$603,000	\$2,092,500 to provide legal services for victims of domestic violence (no divorces). Initiated in 1998. Also, \$276,000 for senior hotline.
HI	\$170,000; initiated in 1996	\$1,568,000; initiated in 1975; most recent increase in 2007, then reduced in 2008.
ID	None	None
IL	DuPage County only, for family and children's issues, \$263,000, initiated in 1995	\$3,500,000 to fund legal information centers, regional legal services hotlines, dispute resolution centers, self-help assistance desks, and civil legal services providers, initiated 2000, increased in 2005 and 2006
IN	None	\$1,500,000; initiated in 1997

IA	None	\$2,000,000; initiated 1996, increased most recently in 2007.
KS	\$876,000, initiated in 1996	None
KY	\$3,200,000; initiated in 1994, increased (doubled) in 2003	\$500,000, initiated in 1996, increased in 1998; decreased in 2008.
LA	\$455,000; 1997 legislature authorized local jurisdictions to assess fees; implemented in several jurisdictions.	\$500,000 operating, initiated 2003, increased 2005 and 2006.
ME	\$1,713,000, initiated in 1997, increased in 2005	\$304,500 to Pine Tree Legal Services; \$128,000 to Legal Services for the Elderly
MD	\$7,476,000; initiated in 1998 and increased substantially in 2004	\$500,000 from state abandoned property fund (initiated 1985)
MA	None; was filing fee surcharge from 1983-94; converted to general appropriation in 1994	\$11,070,000 total; \$6,246,000 for general legal services, plus \$4,824,000 special project appropriations (medicare advocacy, SSI and domestic cases, esp. violence)
MI	\$7,686,000, initiated in 1993	None
MN	Dedicated surcharges on civil filing fees and certain real estate filings existed until late 1980s; now are a revenue source for appropriation	\$13,180,000 (including \$877,000 earmarked for family law) for 07 and 08, initiated in 1983, increased several times.
MS	\$611,000 in 2008FY; initiated in 2006	None
MO	\$3,399,000; initiated 2003; sunset provision extended in 2007 to 12/31/12.	None since FY02-03 (filing fee surcharge initiated).
MT	\$110,000, to serve domestic violence victims; initiated 1999, increased 2005	None
NE	\$2,292,000, initiated in 1997; increased in 2002; also, \$150,000, initiated in 2006, from \$1 fee on criminal penalties	None
NV	\$3,500,000, from several legislatively authorized surcharges implemented in some local jurisdictions.	None
NH	None	\$1,440,000, initiated in 1997, increased in 2007

NJ	Yes (see State Appropriation)	\$29,585,000 (\$2,500,000 initiated in 1966-67, additional appropriation of \$8,000,000 in 1996 with increase in filing fees, \$1,500,000 added in 2000; \$4,400,000 added in 2004); \$4,000,000 added in regular session in 2008, then \$9,200,000 more in special session.
NM	Approximately \$1,500,000 annually; from legislation passed in 2001.	\$2,693,000, initiated 2007
NY	Yes, \$2,000,000 from Legal Services Assistance Fund with funding from a portion of each criminal history search fee; created in 2003.	\$3,987,396 for general legal services + \$1,218,000 for services for domestic violence. Initiated in 1993; one-time major increase in 2007 eliminated in 2008; also 6% cut in 2008
NC	Approximately \$2,333,000 for general legal services; converted from appropriation in 2001; approximately \$1,397,500 for domestic violence added in 2004.	\$1,502,000; initiated 2006
ND	Approximately \$186,000; initiated in 1989; increased in 1997	None
OH	\$14,700,000; initiated in 1985, increased 2005.	None
OK	None	\$1,165,000 for family law cases, initiated in 1996; most recent increase in 2006
OR	\$4,668,522; initiated in 1977, legislature approved increase in 2003 that phased in over 3 years.	\$350,000; initiated 2007 for 2 years; then additional filing fee kicks in to generate comparable amount.
PA	\$9,709,000 in 06-07; initiated in 2002.	\$3,172,000; initiated in FY74-75, several increases
RI	\$83,000 in 07-08; initiated in 1996	\$135,000 for FY09
SC	\$1,608,000; initiated in 1997	None
SD	None	None
TN	\$3,377,000 from 3 sources - filing fee surcharge (initiated in 1995), parking/speeding ticket surcharge (initiated in 1999) and tax on bail bonds (initiated 2001)	None

TX	\$5,425,000; initiated in 1997	\$2,500,000 per year, since 2002, from the Crime Victims Compensation Fund to provide civil legal services to crime victims. \$1,500,000, started in 05-06, in general revenue funds. \$750,000 in 07-08 from a fee charged to strip clubs to serve victims of sexual assault.
UT	None	\$200,000, initiated 2003, increased 2007, to provide assistance in family law and domestic violence cases.
VT	None	Approximately \$587,000
VA	\$7,650,000; initiated in 1992; increased in 2002 and 2003, then big increase in 2008	\$2,000,000; initiated in late 70's, increased periodically, most recently in 2007.
WA	Yes (see State Appropriation)	\$11,687,000; initiated in 1992 (passage of non-dedicated filing fee provided initial funding). Most recent increase in 2007.
WV	\$349,000 to serve domestic violence victims; from civil filing fees and jury fees; initiated 2003	\$375,000 to serve domestic violence victims; increased 2008
WI	None	\$1,000,000, initiated in 2007
WY	None	None

\* This information was compiled by Meredith McBurney, Resource Development Consultant for the ABA Resource Center for Access to Justice Initiatives, a project of the Standing Committee on Legal Aid and Indigent Defendants. This chart will be updated as information is received. For more information, or to submit updated information or corrections, please contact Meredith at 303-329-8091, or [meredithmcburney@msn.com](mailto:meredithmcburney@msn.com).

**Filing Fees and Surcharges in Civil Cases<sup>1</sup>**  
 Revised September, 2006

State	Surcharge for Civil Legal Aid <sup>2</sup>	Amount of Revenue for Civil Legal Aid	2006 Fee Level <sup>3</sup>	Comments/ Explanations
AL	\$0.00		\$198	
AK	\$0.00		\$90	
AZ	\$0.00	\$340,000	\$145	
AR	\$20.00*		\$140	*Funding is from \$20 re-opening. Initiated in 2005.
CA	\$4.80	\$5,248,500	\$180	Initiated in 2005. In 2006 provided cost of living increase of 4.97%
CO	\$0.00		\$136	Plus \$1 tax
CT	\$0.00		\$225	
DE	\$0.00		\$175	
DC	\$0.00		\$120	
FL	\$0.00*		Up to \$195	As of 2004 what had been funding from filing fees surcharges at county level must come from other sources.
GA	\$15.00	\$549,000	\$80	3 counties only. Used for pro bono.
HI	\$25.00	\$169,000	\$200	5 exemptions from fee including small claims, restraining orders, filing on behalf of local government.
ID	\$0.00		\$88	
IL	\$1 to 8.00	\$241,500	\$115-221	Filing fee varies by county. Surcharge varies by type of case. Initiated in 1995; in DePage County only; for pro bono program.
IA	\$0.00		\$100	Additional publication fee of \$5 in counties with population greater than 98,000.
IN	\$0.00		\$130	
KS	6.94 % of all docket fees	\$923,000	\$80	Initiated in 1996.
KY	\$10.00	\$2,922,000	\$100	Initiated in 1994; increased in 1996, 1998 and 2003. Circuit court surcharge \$20.
LA	\$3 to 10.00	\$439,500	\$116-200	Filing fees and surcharge vary by parish. Legislation passed in 1997

				allows parishes to establish surcharges.
ME	\$10.00	\$1,200,000 *	\$120	Initiated in 1997; doubled in 2005. Amount also includes 7% of all other fees collected by courts; a \$5 fee on civil fines, penalties or forfeitures; and \$20 surcharge on superior court filings.
MD	\$10.00	\$6,902,000	\$135	Initiated in 1998; increased in 2004. \$5 summary ejection fee, \$10 fee for small claims, \$20 fee for circuit court filings.
MA	\$0.00*		\$195	*Surcharge converted to appropriation in 1994
MI	Percentage*	\$7,222,000	\$65-150	\$20 motion fee. *23% of fee, minus \$1.6 million for Court of Appeals. Initiated in 1993, increased in 2003. Filing fee amount dependent on amount of money at issue.
MN	\$0.00*		\$240-252	Filing fees vary by county. *Surcharge converted to appropriation in late 1980's
MS	\$5.00	\$400,000-\$800,000	\$75	Initiated in 2006; amount is estimated.
MO	\$10.00	\$2,500,000	\$93-150	Fee varies by county. Initiated in 2003. Also, \$20 supreme court & courts of appeal, \$8 associate circuit court.
MT	\$19*	\$110,000	\$120	Used for legal assistance for victims of domestic violence. Initiated in 1999; increased in 2005. Surcharge on the filing fee for divorce of \$19.
NE	\$5.25	\$1,922,000	\$79	Initiated in 1997; increased in 2002. Also, \$15 fee on post-decree modifications. In 2006, \$1 fee on criminal penalties, including traffic fines.
NV	\$25	\$1,984,000	\$148-193	Initiated in 1976. District court complaints increased to \$10, family case re-opened \$25, county courts \$14. The surcharge is implemented in those counties that enact ordinances.
NH	\$0.00		\$125	
NJ	\$0.00*		\$200	*Part of \$16,400,000 state appropriation comes from filing fees.
NM	\$25.00	\$1,575,000	\$122	Initiated in 2001. \$15 magistrate or metropolitan court.

NY	\$0.00*	\$2,000,000	\$210	Fees were restructured in 2003, and a portion of increase earmarked for legal services.
NC	\$2.00	\$2,958,000	\$80	Converted from appropriation in 2001. Increased in 2004. \$1.05 for domestic violence work, .95 for general legal services.
ND	\$15.00	\$171,000	\$80	Initiated in 1989; increased in 1997.
OH	\$26*	\$14,400,000	\$175-300	Filing fees vary by county. Initiated in 1985; increased in 1993 and 2005. \$26 in municipal and county courts.
OK	\$0.00		\$83-161	
OR	\$30.00	\$3,607,000	\$206	Initiated in 1977, increased in 1997 and 2003. Small claims \$9.50, probate \$38.
PA	\$2.00	\$10,000,000	\$103	Initiated in 2002. \$1.00 first year; \$1.50 in years 2 & 3; \$2.00 in year 4.
RI	\$10.00	\$73,000	\$160	Initiated in 1996.
SC	\$15.00	\$1,601,500	\$150	Initiated in 1997.
SD	\$0.00		\$25	
TN	\$10.00	\$1,878,000	\$142-267	Filing fee add-on (initiated in 1995) & parking/speeding ticket surcharge (added in 1999).
TX	\$25*	\$4,726,000	\$175-232	Filing fees vary by county. \$25 from supreme court and court of appeals.
UT	\$0.00		\$155	
VT	\$0.00		\$225	
VA	\$4.00	\$3,400,000	\$79	Initiated in 1992; increased in 2002 and 2004.
WA	\$0.00*		\$110	*Original state funding was from filing fee surcharge; now an appropriation.
WV	\$10.00	\$296,000	\$145	Initiated in 2003. Amount included \$75,000 in jury fees.
WI	\$0.00		\$256	
WY	\$0.00		\$60	



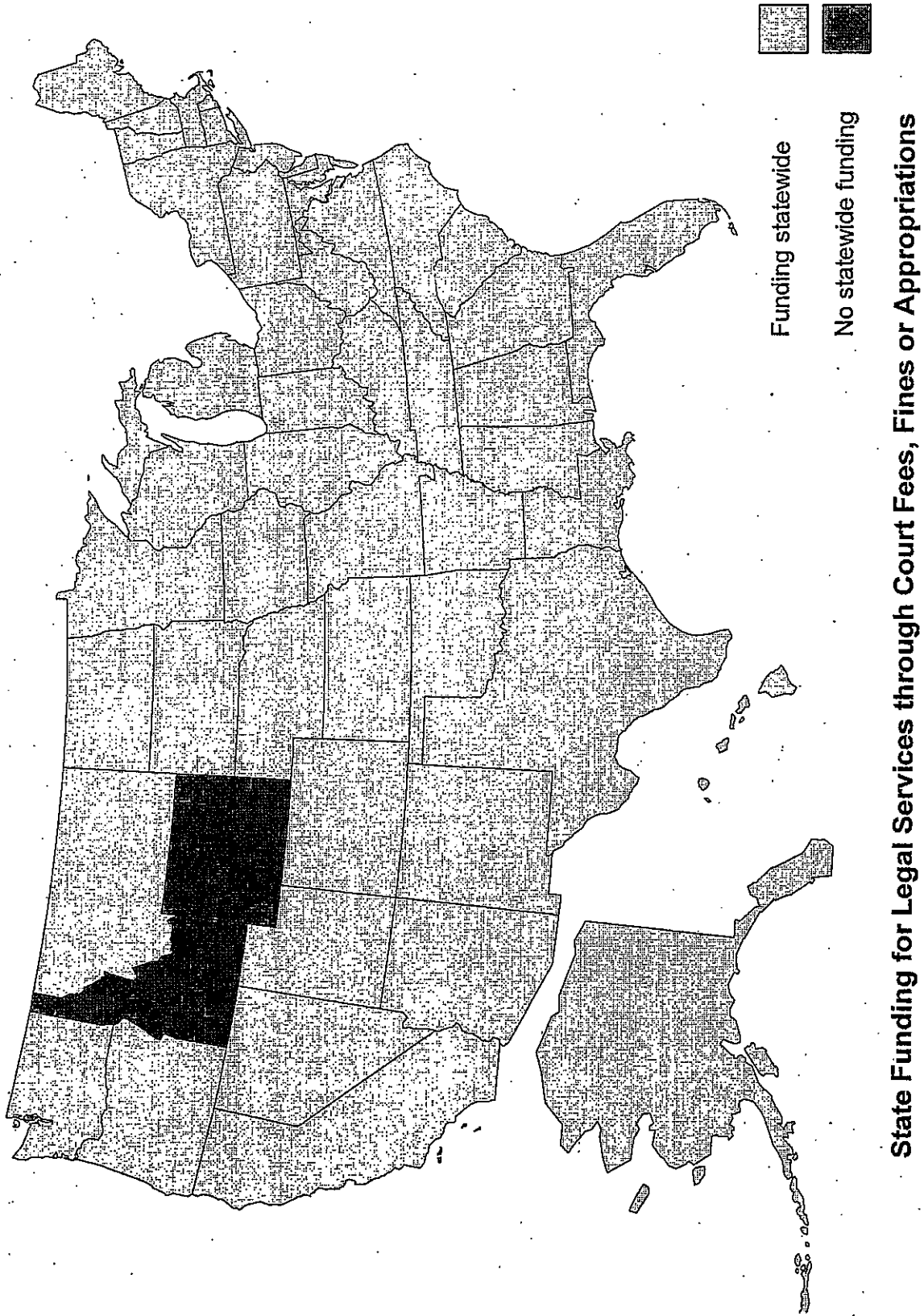
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<sup>1</sup> This information is compiled by the ABA Resource Center for Access to Justice Initiatives, a project of the Standing Committee on Legal Aid and Indigent Defendants. It was gathered primarily from state court websites and relevant statutes. It is updated as new information is received. For more information, or to submit updated information or corrections, please contact Meredith McBurney, ([MeredithMcBurney@msn.com](mailto:MeredithMcBurney@msn.com)) or Barbara Masoner ([bmasoner@aol.com](mailto:bmasoner@aol.com)) at 303-329-8091.

<sup>2</sup> If no \*, surcharge listed is applied to filing fee for court of general jurisdiction (the amount listed in the fourth column). For explanation of amounts with \*, see comments.

<sup>3</sup> For court of general jurisdiction.

# Only 2 States that Do Not Fund Civil Legal Services!



This chart was compiled using data provided by the Project to Expand Resources for Legal Services (PERLS), a project of the ABA Standing Committee on Legal Aid and Indigent Defendants.

Updated as of 3/18/09



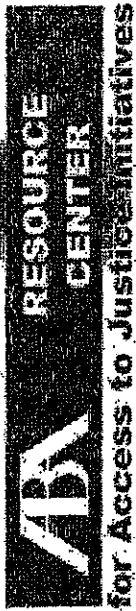
## USING ATTORNEY REGISTRATION FEES OR BAR DUES to Fund Legal Services

- IL** The Illinois Supreme Court authorized an attorney registration fee increase for legal services in 2002. It is \$42 and generates about \$2.640 million. (*Voluntary bar*)
- MN** This was the first attorney registration fee increase for legal services. It is \$50 for attorneys admitted more than 3 years and \$25 for all others, with a 50% discount for those with adjusted gross income under \$25,000. It was authorized by the Minnesota Supreme Court in 1997 and generates approximately \$1 million. (*Voluntary bar*)
- MO** The Missouri State Bar agreed to assess its members an additional \$20 in dues to fund legal services, beginning in 2002. The increase generates about \$436,000. (*Unified bar*)
- OH** In 1998, the Ohio Supreme Court began utilizing a portion of the attorney registration fee to fund legal services, although there was not a specific increase for this purpose and the grant is not a specific portion of bar dues. The amount was \$400,000 for 2008. (*Voluntary bar*)
- TX** In 2003, legislation was approved by the Texas legislature to increase the bar dues by \$65. The funds are split evenly between civil legal aid and innovative criminal indigent defense projects. In 2007, the legislature removed a sunset provision that had been scheduled to take effect in 2008. The civil legal aid portion was \$1,986,000 in 2007. (*Unified bar*)
- WV** In 2005, the State Bar requested and the WV Supreme Court approved a dues increase of \$55. The increase was for three purposes – disciplinary efforts, legal research services, and legal aid. Each year since then, the Board of Governors of the Bar has voted to allocate \$150,000 of the increased revenue to legal aid providers. (*Unified bar*)
- WI** In 2005, the WI Supreme Court approved an annual assessment of \$50 per attorney starting FY 2006; in 2008 it generated \$815,000. The request was submitted to the Court by the WI IOLTA program and was opposed by the State Bar. (*Unified bar*)

For more information about registration fees and bar dues assessments, see the PERLS manual, *Innovative Fundraising Ideas for Legal Services –2004 Edition*, at <http://www.abanet.org/legalservices/sclaid/perls.html>.

Prepared by the ABA Resource Center for Access to Justice Initiatives. For more information, contact Meredith McBurney, Resource Development Consultant, at 303/329-8091 or [MeredithMcBurney@msn.com](mailto:MeredithMcBurney@msn.com).

Updated: March 18, 2009



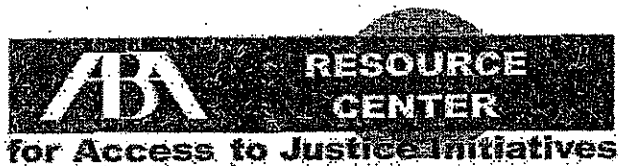
Bar Dues Opt-Outs and Add-Ons, Most Recent Update 1/08/09

State	Amount Requested/ Raised Per Year	# of Attorneys*	Comments
AK	None/approx. \$3,000	2,385	Add-on; for Alaska Legal Services. Paragraph on back of form provides description of AL.S. Exact amount unavailable.
AZ	\$50/\$154,000	12,793	Opt-out. Funds go to the AZ Foundation for Legal Services & Education
CA	\$100/\$904,000	148,399	Opt-out, with clear instructions for changing or eliminating. Instituted 2008 statement. Raises money for Justice Gap Fund, distributed same as IOLTA and state funding.
CO	1. \$25/\$18,000 2. None/\$3,000	18,894	1. Opt-out; for pro bono, metro Denver area only. 2. Add-on; for Legal Aid Foundation, which funds CO Legal Services. The back of the dues form provides a very brief description about the various entities (5 total) on the form.
FL	\$45/\$158,000	59,953	Add-on; to the FL Bar Foundation, for Children's Legal Services. A letter from the bar president promoting the cause is included.
GA	\$250/\$380,000	27,227	Add-on; integrated with total bar campaign for GA Legal Services Program.
HI	\$75/\$157,000	4,126	Opt-out; for pro bono program.
LA	None/\$27,000	16,965	Add-on; requires writing separate check; goes to the LA Bar Foundation, which distributes to its grantees.
MS	\$20/\$6,500	6,723	Add-on; for statewide pro bono program
NV	\$500/\$55,000	6,105	Add-on; pro bono buy-out.
NH	Unknown/\$41,000 (aprox)	3,309	Add-on; part of joint campaign for 3 legal aid providers in state.
NM	None/\$20,000	5,267	Add-on; for joint fundraising campaign; most would be raised through campaign if add-on did not exist.
OK	\$25/\$12,000	12,357	Add-on; to Oklahoma Bar Foundation, distributes to grantees annually, via IOLTA grants.
SC	\$30/\$192,500	8,961	Opt-out; for legal services providers; no solicitation activity.
SD	\$75/\$68,000	1,761	Add-on; to Access to Justice and East River. First implemented about 2004.

TX	\$100/\$521,000	73,505	Add-on; to Texas Equal Access to Justice Foundation, which distributes to its grantees; there also is a mandatory dues assessment of \$65 (½ for civil legal aid, ½ for criminal defense).
UT	None/\$5,000	6,215	Add-on; funds split among 3 legal aid providers.
WY	\$50/\$10,000	1,537	Add-on; contributions to WY State Bar Foundation, which distributes to legal aid providers.

\*Number of resident, active attorneys as of December 31, 2007, as reported to the American Bar Association, Market Research Department, by individual state bar associations or licensing agencies.

**Prepared by the ABA Resource Center for Access to Justice Initiatives. For more information, contact Meredith McBurney, Resource Development Consultant, at 303/329-8091 or MeredithMcBurney@msn.com.**



## ***Pro Hac Vice* Funding for Legal Services**

***Pro Hac Vice*** fees are paid by out-of-state lawyers who are not licensed in a particular state but request permission to make an appearance in that state's courts. Approximately half of the states have such fees. In recent years, several states that did not already have a *pro hac vice* fee have instituted one and are using the revenue to fund civil legal services for the poor. One state, Alabama, has recently increased its fee and will use the increase for civil legal services.

**Alabama:** The supreme court revised the *pro hac vice* rule in November, 2007 to increase the fee from \$100 to \$300. Revenue in first full year was \$112,000. The funds go to the Alabama Law Foundation for distribution to programs providing legal services to the poor.

**Arizona:** The supreme court increased the *pro hac vice* fee effective January 1, 2009, to provide funds for programs providing legal services to the poor. The fee is \$460, and 15% goes to fund legal services. Estimated revenue is \$50,000.

**Mississippi:** The supreme court authorized the *pro hac vice* rule in early 2003. The fee is \$220, of which \$200 is for legal services. In FY07-08 it generated \$82,000. The payments are made to the Mississippi Bar to be used to provide legal services to the indigent.

**Missouri:** The supreme court authorized the rule in 2002. The fee is \$100, it generated \$123,000 in 2007, and the funds go to civil legal services programs in the state.

**New Mexico:** The supreme court authorized the rule in late 2004. The fee is \$250, and it generated \$120,000 in 2008. Funds are paid to the New Mexico State Bar Foundation for distribution to legal services providers.

**Oregon:** The legislature authorized the rule in 2001, which was then implemented by the state supreme court in 2002. The fee is \$250 per case per year and in 2007 generated \$100,000. The legislation provides that the funds will be used for "legal services provided through the Legal Services Program established under ORS 9.572", which requires the Oregon State Bar to provide standards and guidelines for legal service providers receiving funding.

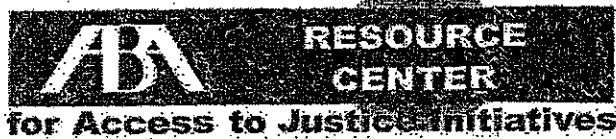
**Pennsylvania:** The supreme court authorized the rule in June, 2007, to take effect on September 4, 2007. The fee is \$100 per case and applies to cases in the state's trial and appellate courts; proceeds for the first 10 months were \$120,000. The fees will be paid to the PA IOLTA program, to cover the expenses to administer the regulation, and to fund organizations that provide civil legal services to the indigent or for similar purposes as authorized by the Supreme Court of Pennsylvania.

**Texas:** The Texas rule was authorized by the legislature in September, 2003. The fee per case in Texas is \$250, and it brought in about \$270,000 in 2007. The funding is administered by the Texas IOLTA program, which also administers the state legislative (filing fee surcharge and appropriation) funds for legal services.

For more information on the use of *pro hac vice* rules to fund legal services, see the fundraising manual, *Innovative Fundraising Ideas for Legal Services –2004 Edition*, at <http://www.abanet.org/legalservices/sciaid/atj/resourcecenter/resourcedevelopmentmainpage.html>

Prepared by the ABA Resource Center for Access to Justice Initiatives. For more information, contact Meredith McBurney, Resource Development Consultant, at 303/329-8091 or [meredithmcburney@msn.com](mailto:meredithmcburney@msn.com).

Updated: March 18, 2009



**Legislation and Court Rules Providing for Legal Services  
to Receive Cy Pres Residuals\***  
Originally prepared 10/29/07; Most recent update 12/10/08

**IL**

*Legislature amended Section 5 of the Code of Civil Procedure to add new Section 2-807 (735 ILCS 5/2-807), to establish a presumption that residual funds in class actions will go towards organizations that improve access to justice for low-income Illinois residents. Courts have the discretion to award up to 50% of the funds to other organizations that serve the public good as part of a settlement if the court finds good cause to do so, but at least 50% of these funds must go to support legal aid.*

*Effective date:* July 1, 2008

*Amount received to date:* Has just taken effect, but even before it passed judges were citing the new law in approving some substantial cy pres awards to support legal aid (including a \$2 million award to The Chicago Bar Foundation used to establish a new loan repayment assistance program for legal aid lawyers and three awards totaling more than \$700,000 to Prairie State Legal Services).

*Implementation work and analysis:* The Chicago Bar Foundation has developed educational materials and sample language that they are distributing to area judges, class action lawyers and other relevant parties (e.g., claims administrators).

*For more information, please contact:* Bob Glaves, Executive Director, Chicago Bar Foundation, [bglaves@chicagobar.org](mailto:bglaves@chicagobar.org), 312/554-1205.

**MA**

*New language in Rule 23 of the Massachusetts Rules of Civil Procedure, adopted by the Supreme Judicial Court of Massachusetts, reads, in part:* "In matters where the claims process has been exhausted and residual funds remain, the residual funds shall be disbursed to one or more nonprofit organizations or foundations (which may include nonprofit organizations that provide legal services to low income persons) which support projects that will benefit the class or similarly situated persons consistent with the objectives and purposes of the underlying causes of action on which relief was based, or to the Massachusetts IOLTA Committee to support activities and programs that promote



access to the civil justice system for low income residents of the Commonwealth of Massachusetts.”

*Effective date:* January 1, 2009

*Amount received to date:* None. See effective date.

*Implementation work and analysis:*

*For more information, please contact:* Jayne Tyrrell, Executive Director, Massachusetts IOLTA Committee, [jtyrrell@maiolta.org](mailto:jtyrrell@maiolta.org), 617/723-9093.

NC

*Legislature amended Subchapter VIII of Chapter 1 of the General Statutes to add new Article 26B, which reads, in part:* “Prior to the entry of any judgment or order approving settlement in a class action established pursuant to Rule 23 of the Rules of Civil Procedure, the court shall determine the total amount that will be payable to all class members, if all class members are paid the amount to which they are entitled pursuant to the judgment or settlement. The court shall also set a date when the parties shall report to the court the total amount that was actually paid to the class members. After the report is received, the court, unless it orders otherwise consistent with its obligations under Rule 23 of the Rules of Civil Procedure, shall direct the defendant to pay the sum of the unpaid residue, to be divided and credited equally, to the Indigent Person’s Attorney Fund and to the North Carolina State Bar for the provision of civil legal services for indigents.”

*Effective date:* October 1, 2005

*Amount received to date:* \$18,077 (the legal services share), from two cases.

*Implementation work and analysis:* There has not yet been any serious effort to educate judges and/or lawyers who are likely to be involved in relevant cases. The North Carolina Access to Justice Commission is likely to take this on as one of its responsibilities.

*For more information, please contact:* Evelyn Pursley, Executive Director, North Carolina IOLTA, [epursley@ncbar.gov](mailto:epursley@ncbar.gov), 919/828-0477.

TN

*Legislature amended the Tennessee Code Annotated, Title 16, Chapter 3, Part 8, to create the Tennessee Voluntary Fund for Indigent Civil Representation and authorize it to receive contributions from several sources, including:* “The unpaid residuals from settlements or awards in class action litigation in both state and federal courts, provided

any such action has been certified as a class action under Rule 23 of the Tennessee Rules of Civil Procedure or Rule 23 of the Federal Rules of Civil Procedure;”

*Effective date:* September 1, 2006

*Amount received to date:* None.

*Implementation work and analysis:* Working on a campaign.

*For more information, please contact:* Lisa Primm, Policy and Training Director, Tennessee Alliance for Legal Services, [lprimm@tals.org](mailto:lprimm@tals.org), 615/627-0956, ext. 25.

WA

*New language in Rule 23, adopted by the Washington Supreme Court, reads, in part:* “Any order entering a judgment or approving a proposed compromise of a class action certified under this rule that establishes a process for identifying and compensating members of the class shall provide for the disbursement of any residual funds. In matters where the claims process has been exhausted and residual funds remain, not less than twenty-five percent (25%) of the residual funds shall be disbursed to the Legal Foundation of Washington to support activities and programs that promote access to the civil justice system for low income residents of Washington State. The court may disburse the balance of any residual funds beyond the minimum percentage to the Legal Foundation of Washington or to any other entity for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.”

*Effective date:* January 3, 2006

*Amount received to date:* \$124,162

*Implementation work and analysis:* In the months immediately following the adoption of the rule, there was work to educate judges and lawyers about its existence. Model language to implement the rule was adopted and judges were supportive. It appears that many class action cases in Washington settle without a trial and that in some of these cases, no residual fund is created. It is difficult to know if some cases are slipping through the cracks, because Washington courts do not track which cases are class actions. The first few checks came in well over a year after the rule was effective. Disbursements to date have ranged from \$12 to \$93,836.

*For more information, please contact:* Andrea Axel, Grants Manager, Legal Foundation of Washington, [andrea@legalfoundation.org](mailto:andrea@legalfoundation.org), 206/957-6289.

\*Prepared by Meredith McBurney, Resource Development Consultant for the American Bar Association's Resource Center for Access to Justice Initiatives, a project of the Standing Committee on Legal Aid and Indigent Defendants. Contact Meredith at [meredithmcburney@msn.com](mailto:meredithmcburney@msn.com) or 303/329-8091.

## Increasing IOLTA Revenue

### Conversion to Mandatory IOLTA

- An effective way to increase IOLTA revenue for programs that currently have voluntary or opt-out participation
- Programs that converted from opt-out to mandatory IOLTA in the 1990s realized annual revenue increases of 49 percent to well over 100 percent
- American Bar Association policy has supported mandatory IOLTA since 1988
- The Supreme Court's decision in *Brown v. Legal Foundation of Washington* 538 U.S. 216 (2003) resolved any Fifth Amendment concerns that may have existed regarding mandatory IOLTA

### Other Rule and Policy Changes

IOLTA programs have pursued other rule and policy changes to increase revenue. Recent examples include:

- **Adding “Comparability” Provisions**, which require that financial institutions pay IOLTA accounts no less than the interest rate or dividend generally available to non-IOLTA depositors at the same institution when the IOLTA accounts meet or exceed the same minimum balance or other account eligibility requirements
- **Defining “Reasonable Fees,”** which distinguish charges that are properly deducted from the IOLTA account earnings and borne by the IOLTA program from others that should be properly borne by the lawyer or firm maintaining the account or passed along to the client, unless waived by the bank
- **Prohibiting “Negative Netting,”** which is the practice of using earnings from one IOLTA account to pay fees on another account. The effect of this practice, if not prohibited, is that the IOLTA program bears the fees that exceed earnings on individual accounts

### Assistance Available

For more information on these and other IOLTA revenue enhancement strategies, contact your state IOLTA program or Beverly Groudine, Staff Counsel, American Bar Association Commission on IOLTA, at [bgroudine@staff.abanet.org](mailto:bgroudine@staff.abanet.org) or 312/988-5771.

## TYPES OF IOLTA PROGRAMS

(Program status as of May 2009)

### MANDATORY

*Alabama*  
*Arizona*  
**Arkansas**  
*California (L)*  
**Colorado**  
**Connecticut (L)**  
**Florida**  
*Georgia*  
**Hawaii**  
**Illinois**  
*Indiana*  
*Iowa*  
**Louisiana**  
*Maine*  
**Maryland (L)**  
**Massachusetts**  
*Michigan*  
*Minnesota*  
*Missouri*  
*Mississippi*  
*Montana*  
*Nevada*  
*New Jersey*  
*New Mexico*  
**New York (L)**  
*North Carolina*  
*North Dakota*  
*Ohio (L)*  
**Oklahoma**  
**Oregon**  
*Pennsylvania*  
*Rhode Island*  
*South Carolina*  
**Texas**  
*Utah*  
**Vermont**  
*Washington*  
**West Virginia**  
*Wisconsin*

### OPT-OUT

**Alaska**  
*Delaware*  
**District of Columbia**  
**Idaho**  
**Kansas**  
**Kentucky**  
**Nebraska**  
**New Hampshire**  
**Tennessee**  
**Virginia**  
**Wyoming**

### VOLUNTARY

*South Dakota*  
*Virgin Islands*

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39

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11

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2

**Notes:**

States in **Bold** converted from voluntary status.

States in *italics* converted from opt-out status.

(L) denotes programs created by state legislature (state statute). All other programs were created by state Supreme Court order.

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## IOLTA Interest Rate Comparability<sup>1</sup>

As of 5/1/09, 24 jurisdictions have thus far been identified as adopting comparability legislation, rules, regulations and/or guidelines which include:

- Defining comparability as the highest rates generally available to other similarly-situated non-IOLTA customers
- Allowing the use of higher rate products including repurchasing agreements (REPOs) and government Money Market Funds
- Requiring that lawyers maintain IOLTA accounts only at financial institutions that meet the comparability requirements

The jurisdictions are:

Alabama  
Arkansas (effective February 1, 2007)  
California (effective January 1, 2008)  
Connecticut  
Florida  
Hawaii (effective July 1, 2008)  
Illinois (effective June 1, 2007)  
Indiana  
Louisiana (effective April 1, 2008)  
Maryland (effective April 1, 2008)  
Massachusetts (effective January 1, 2007)  
Maine (effective April 1, 2008)  
Michigan  
Minnesota (effective July 1, 2007)  
Mississippi (effective January 1, 2007)  
Missouri (effective January 1, 2008)  
New Jersey  
New Mexico (effective January 1, 2009)  
New York (effective August 15, 2007)  
Ohio  
Pennsylvania (effective September 20, 2008)  
Texas (effective March 1, 2007)  
Utah (effective April 1, 2008)  
West Virginia (effective April 15, 2009)

Note: Effective dates are listed for those states where comparability has been in effect for less than 30 months.

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<sup>1</sup> This listing is currently being re-evaluated to determine if additional states meet the criteria or if different criteria should be used.

# Recovery: What IOLTA Programs Can Do Now to Maximize Revenue and Protect Revenue in the Future

by Jane E. Curran

*This article appeared in MIE Journal, Vol. 23 No.1 (Spring 2009). Reprinted with permission.*

*This article will report on the current state of Interest on Lawyers' Trust Accounts (IOLTA) revenue, recount past IOLTA revenue cycles, describe current efforts by IOLTA programs to address the revenue drop,<sup>1</sup> and explain how IOLTA programs are dealing with the historically low Federal Funds Target Rate (FFTR). Finally, the article will describe steps IOLTA programs and their grantees can take to prepare for the next revenue increase.*

## **IOLTA Revenue**

It is an understatement to say that in 2008, IOLTA revenues began to decline significantly from their high watermark in 2007. National data is not available yet for 2008, but it is clear that the down cycle we are presently experiencing is far deeper than such cycles have been in the past.

Using data from Florida as an example, 2008-09 Interest on Trust Accounts (IOTA) revenue is projected to decline 71% from the prior year. Balances in IOTA accounts dropped 23% from May 2007 to January 2009. Florida's statewide weighted interest rate<sup>2</sup> is down 79% for the same period. The decrease in Florida's IOTA revenue is primarily the result of dropping interest rates. However, IOTA account balances have also fallen for the first time since 1981, reflecting the troubled economy. At workshops held jointly by the American Bar Association Commission on IOLTA and the National Association of IOLTA Programs ("IOLTA Workshops") in Boston this February, several IOLTA programs from around the country reported similar trends.<sup>3</sup>

Since at least 1993, national IOLTA revenue has run in cycles of roughly three years interrupted with occasional one-year or two-year cycles, tracking the national economy.<sup>4</sup> Overall, IOLTA revenue has grown steadily over the past 15 years. Much of that growth has been fueled by states' implementation of mandatory IOLTA<sup>5</sup> or comparability.<sup>6</sup>

Because of the depth of the current recession, 2008 may not simply be the first year of the next regular down cycle for IOLTA revenue. Several IOLTA programs are projecting much steeper declines than usual in IOLTA revenue for 2009-10.

## **What IOLTA Programs Can and Are Doing about Falling Revenue**

IOLTA programs have already embarked on or are exploring a number of actions in an effort to soften further revenue declines. Responding effectively to falling IOLTA revenue was the topic of a full afternoon's discussion at the IOLTA Workshops. However successful these efforts may be, it is unlikely that they can offset the full effect of the current recession on interest rates and IOLTA account balances.

## **Mandatory IOLTA**

In most states, it is now mandatory for attorneys to maintain IOLTA accounts. In several of the remaining states, programs have begun to advocate for mandatory IOLTA rules. Programs that converted to mandatory IOLTA before the recent drop in interest rates garnered

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## Recovery

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significant increases in revenue. Programs taking this step now may increase revenue somewhat in the near term, but any increase will be limited by low interest rates and reduced IOLTA account balances. Still, making this change now may generate a substantial increase in revenue in the future.

### **Comparability**

Some IOLTA programs have considered amending their IOLTA rules or guidelines to include an

interest rate comparability provision, while in the process of converting to mandatory or where rules making IOLTA participation mandatory already exist. As is the case with converting to mandatory in the present economic climate, adopting a comparability provision now may not result in much, if any increased revenue in the near-term because of low interest rates and reduced IOLTA account balances. However, IOLTA programs adding comparability provisions are setting the stage for revenue growth as the economy recovers.

It is important to point out that comparability is not a "one size fits all" proposition. To benefit from comparability, a portion of a program's IOLTA accounts must regularly hold balances in excess of \$100,000. That is the common threshold over which banks make higher-paying products available to customers and the minimum break-even point to offset the higher fees that go along with higher-paying products. Some IOLTA programs have, after analyzing their IOLTA accounts, concluded that comparability

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would not yield better results than they have already achieved by negotiating directly with banks for higher interest rates or reduction or elimination of service charges. Those programs usually revisit their analysis periodically to determine if changes in various factors have created more favorable conditions for pursuing comparability.

### Reducing Bank Service Charges

Some IOLTA programs, which have drafted revisions to their rules or guidelines, have taken the opportunity to delineate which service charges can be deducted from IOLTA account interest and which are the responsibility of the lawyer or law firm.<sup>7</sup> In addition, these programs have added provisions that prohibit banks from deducting service charges that exceed the interest earned on one IOLTA account from another IOLTA account, a practice called "negative netting."

### Tweaking "Benchmarks"

In some more recent comparability rules or guideline changes, participating banks are offered the option to comply with comparability requirements by paying a "benchmark" rate. A "benchmark" refers to a rate that reflects overall comparability in that state's market. This is determined based on the IOLTA program's analysis of the highest interest rate or dividend generally available to non-IOLTA customers holding similar balances at banks holding IOLTA accounts in its state. Benchmark rates are an attractive alternative because they are easier for both the bank and for the IOLTA program to administer.<sup>8</sup>

State or jurisdiction-wide benchmark rates have, until recently, been expressed as a

percentage of the prevailing FFTR set by the Federal Reserve. The FFTR was used to express the benchmark because, historically, it has been the major influence on interest rates paid on repurchase agreements and the earnings of money market mutual funds.

Although the FFTR was and may again in the future be the appropriate index for expressing a benchmark rate, when it recently plunged to .00% - .25%, it was no longer an accurate approximation of what banks were actually paying comparable, non-IOLTA customers. As a result, some programs in states where the IOLTA rule includes a benchmark rate have been seeking formal IOLTA rule changes or amending their guidelines in order to ensure receiving comparable interest rates.

Several new models are now being implemented to adjust existing benchmark provisions to allow flexibility in how the benchmark is expressed. Importantly, all of these models retain the guiding principle that however the benchmark is expressed it must reflect an overall comparable rate for that state. Also, these models continue to be premised on the analysis of the interest rate banks pay comparable, non-IOLTA customers and the requirement that qualifying IOLTA accounts must be paid the same rate of return.

One model requires banks that had voluntarily chosen to pay the benchmark rate to now pay the *higher of* the existing FFTR-linked benchmark rate or a flat interest rate that *currently* approximates the state or jurisdiction-wide interest rate banks are paying comparable, non-IOLTA customers. Banks that can demonstrate to the IOLTA program that the benchmark rate described above is higher than what they pay their comparable, non-IOLTA customers, may pay their own, lower comparable interest rate.<sup>9</sup> Another model gives the IOLTA

program flexible authority to periodically reset the benchmark rate that reflects the state's overall comparability rate. However, it does not require that the benchmark use a numerically flat rate or to express the rate in relation to a specific index.

A third model combines elements of the two previous models. It includes a provision that the bank pay the higher of a flat interest rate or a percentage of the FFTR, but allows the IOLTA program flexibility in determining how that interest rate may be expressed in terms of the FFTR or another recognized market index. It also permits the flexibility found in the second model so that the program can periodically adjust the benchmark to reflect the state's overall comparability rate.

All of the models, which modify the traditional expression of benchmark rates, are consistent with the principle of comparability. They are premised on the analysis of the interest rate banks pay comparable, non-IOLTA customers and the requirement that qualifying IOLTA accounts must be paid the same rate of return.

### NEGOTIATION WITH BANKS FOR HIGHER INTEREST RATES

#### IOLTA Programs

#### without Comparability

IOLTA programs without comparability requirements are re-doubling their efforts to negotiate higher interest rates. These efforts generally produce better results where IOLTA accounts are maintained in regional or community banks among which there is greater competition for lawyer/law firm business. Negotiations are most fruitful when grantees, bar leaders and state justice commissions work in concert with their IOLTA programs.

#### IOLTA Programs with Comparability

Some of the more recently

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implemented comparability provisions of IOLTA rules or guidelines include clauses allowing for negotiated interest rates or inviting banks to pay rates higher than required under the comparability provision. Banks are then recognized by IOLTA programs in accordance with the level of interest that they pay. For example, an IOLTA program may publish a list of "Prime Partner" banks, which pay a rate above the comparable level and may highlight the highest-paying banks as "Leadership Banks." Banks can also be recognized for reducing or eliminating service charges. For the same reasons noted above, it is generally the regional or community banks that voluntarily choose to pay higher rates. Accordingly, where the majority of IOLTA accounts are maintained in larger or multi-state banks, revenue increases due to banks voluntarily paying rates above comparable levels are often lower.

### If We Knew Then What We Know Now...

Looking back, many IOLTA programs now wish that they had been able to establish grant and operating reserves with the significant revenue increases earned through the implementation of mandatory IOLTA rules and comparability provisions. Those without reserves cannot reasonably be expected to maintain any measure of stable grant funding given the sharp decline in interest rates and therefore IOLTA revenues. This is true even if the IOLTA revenue enhancement activities described above achieve their maximum potential, and will remain so until the economy improves.

### Looking Ahead

Recognizing that IOLTA revenue rises and falls in fairly regular cycles, IOLTA program and

grantee leaders can plan now for the future and strike a balance between increasing funding to make up for past grant funding cuts and setting aside grant and operating reserves when IOLTA revenue enters its next up cycle to help stabilize grants in the next down cycle.

The next up cycle will come, as will the next down cycle. In this sense, there may be no such thing as an IOLTA revenue "crisis" given that, historically, revenue goes up and down at fairly predictable intervals. Both IOLTA programs and legal aid grantees need to build that reality into their planning. Grantees should carefully consider IOLTA revenue cycles when increasing staff. One estimate is that it costs about \$39,000 for each staff position added and then eliminated when grant funds go down.

For IOLTA programs, there are a number of reserve policy models in place. Although, as we have learned, none is foolproof in a recession as severe as the present circumstances when interest rates plummet and investments lose ground and when none of us knows for sure whether our reserves will last longer than the recession.

IOLTA programs need to carefully project best and worst-case scenarios for IOLTA revenue and share those forecasts with their grantees. A number of accurate forecasting models are available that use interest rate and economic activity.

Grantee leaders need to have strategic plans in place for when IOLTA grants next decline; as they will inevitably do. Those plans should include building their own reserves as funding sources permit, and discussing with their IOLTA programs how much of the IOLTA grant may be held in reserve.

IOLTA programs and grantee leaders should decide together if reserve policies or grantee strategic plans should contemplate the type of economic collapse, we are currently experiencing.

The best future for IOLTA grant funding will come from careful and cooperative planning between IOLTA programs and their grantees.

It will be challenging in the future, as it has been in the past, for IOLTA programs to hold back increased IOLTA revenue and for grantees to do the same with their IOLTA and other sources of funding. Client services, infrastructure improvements for grantee organizations, and adequate IOLTA program staffing to administer IOLTA and maintain or generate increased income are all pressing needs.

We may have several years before which IOLTA revenues will rise. During this time, we can work together as a community and develop plans to avoid or substantially reduce future instability in IOLTA grant funding, grantee operations and IOLTA program operations.<sup>10</sup> About three years following the next rise in IOLTA revenue, we will be able to look back and gauge our success.

*Jane E. Curran has been executive director of Florida's IOTA program since 1982. She served on the board of the National Legal Aid & Defender Association and as a member of the ABA Commission on IOLTA.*

### Endnotes

- <sup>1</sup> This article deals only with increasing revenue from IOLTA. However, many IOLTA programs are strengthening or considering expanding their activities to raise revenue from non-IOLTA sources such as fundraising, *cy pres*, state appropriations, filing fee increases and through other means. These efforts are often led or aided by state justice commissions.
- <sup>2</sup> A weighted interest rate reflects the rate paid on the majority of IOLTA account funds.
- <sup>3</sup> It is important to note, however, that while IOLTA income is declining precipitously, in many states this will not translate into a similar percentage decline in IOLTA grants due to grant reserves established during the recent "up" cycle in IOLTA revenue.
- <sup>4</sup> 1993-1995 down; 1996-1998 up; 1999 down; 2000-2001 up;

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## Recovery

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2002-2004 down; 2005-2007 up; as reported in the *IOLTA Handbook* published by the ABA Commission on IOLTA, 2008.

- <sup>5</sup> Rules making it mandatory for attorneys to maintain IOLTA accounts.
- <sup>6</sup> Comparability requires banks to pay interest rates on IOLTA accounts, which are comparable to those paid to other customers when IOLTA accounts meet the same minimum balance or other requirements. The recommended features for IOLTA comparability are: 1) mandatory IOLTA; 2) that banks choosing to participate in IOLTA must pay the highest interest rate or dividend generally available from the bank to its non-IOLTA customers with similar account balances; 3) allowing the use of higher rate products including repurchasing agreements (REPOs) and government Money Market Funds; and 4) that lawyers may only hold IOLTA accounts at banks that have agreed to pay comparable interest rates or dividends.
- <sup>7</sup> Although IOLTA rules and guidelines differ, they generally permit banks to deduct standard checking account transaction charges as well as a reasonable IOLTA account administrative fee for reporting and remitting interest. Special services such as wire transfers or account reconciliation are the responsibility of the lawyer or law firm.
- <sup>8</sup> Traditional comparability provisions require the IOLTA program to work with each bank to determine the comparable interest rate and then monitor remittances from that bank to ensure ongoing compliance if the bank has raised or lowered interest rates for comparable, non-IOLTA customers. Benchmark rates eliminate this need for constant monitoring.
- <sup>9</sup> This approach is likely to be effective over the long term as it allows for the use of either a flat interest rate or the original benchmark expressed as a percent of the FFTR in contemplation of a return of higher FFTR rates when the economy turns around.
- <sup>10</sup> It is important that any grantees interested in the kinds of strategies noted in this article work together with their IOLTA program in light of IOLTA programs' expertise about the banking system and technical aspects of IOLTA accounts.



# State Access to Justice Tools

## Access to Justice Checklist

The following are some initiatives undertaken by state Access to Justice entities. The list is not meant to be exhaustive or to apply to every state. Use it to develop ideas for your state.

### Education, Research, Awareness

- Supreme Court hearing regional hearings
- Bar/court education campaign—speakers, materials, track or sessions at bar conference, newsletters
- Statewide Access to Justice report and recommendations
- Media campaign—op-eds, editorial board meetings, press releases, public services announcement, video
- Legal needs study
- Annual Access to Justice conference
- Legal aid open houses

### Funding for Civil Legal Assistance

- State appropriation
- Modification of IOITA rules/structure to increase yield
- Court filing fee/fine surcharge
- Statewide resource development plan—by consultant or task force
- Attorney registration fee surcharge or dues assessment
- Court or legislative task force on civil legal aid funding
- Bar dues check-off or add-on
- Civil right to counsel—legislation and research
- Pro hac vice* (practice by out-of state attorneys) fee
- National—support for LSC funding with state congressional delegation
- Statewide private bar fundraising campaign
- Cy pres* awards and structured class action settlements—education and development

### Pro Bono

- Court-based statewide and/or regional pro bono structure
- Pro bono case priority on court docket
- Pro bono reporting, mandatory or voluntary
- Emeritus rule—waiver of bar dues/fees for retired attorneys engaged in pro bono work
- Rule setting aspirational pro bono standards
- Creation of web-based and other resources to support pro bono attorneys.
- Continuing legal education credit for pro bono and/or related mentoring
- Annual bench/bar conferences focused on pro bono
- Recruitment campaign, led by state bar and Supreme Court
- Statewide data collection on current pro bono to develop ideas for expanding

### **Student Loan Repayment Assistance**

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- State appropriation
- Campaign to develop law school based programs/scholarships
- Privately funded program
- Bar or bar foundation funded or sponsored program

### **Court Access and Pro Se**

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- Statewide action plan on self-represented litigants
- Statewide action plan on litigants with limited English proficiency
- Court assistance offices, self-help centers
- Web sites with court information and forms
- Simplification and standardization of forms and pleadings
- Revision of rules to allow "unbundling" of legal services
- Training for court personnel
- Review of new rules, forms, and legislation affecting access to courts for low-income people
- Access to Justice award for judges and court staff
- Evaluation and data collection

### **State Agency Administrative Fairness**

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- Analysis and report on state agency procedures
- Awards and identification of best practices
- Training for hearing officers and agency personnel

### **Program/Delivery/Collaboration**

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- Development/expansion of capacity to serve clients who cannot be served with LSC funds
- Development/expansion of capacity to serve clients with limited English proficiency
- Development/expansion of capacity for systemic advocacy
- Substantive task forces, conferences, training and support for legal aid and volunteer advocates
- Statewide plans and staffing for coordination of advocacy, training, technology

# State Access to Justice Tools

## Best Practices: Twelve Lessons from Successful State Access to Justice Efforts

While no two states are alike, and every state's Access to Justice effort must be addressed to local circumstances, some basic lessons can be discerned in the Access to Justice efforts that have been most successful around the country over the past decade.

1. **Successful Access to Justice efforts are founded upon a strong partnership among the bar, the judiciary, and legal aid providers. Law schools can also be key partners, while representatives from outside the legal community can bring new perspectives and help broaden support.**

Each of the key institutional partners – the bar, the courts, and legal aid providers – brings a particular set of strengths to the table. The bar brings its volunteer base and professional structure, including the potential for staffing Access to Justice efforts. Providers bring their direct experience with the civil legal needs of low-income people, their expertise in developing and implementing effective delivery models, and their links to low-income communities. The judiciary brings its unique credibility and rule-making authority, as well as direct experience in responding to the growing number of self-represented litigants. The full range of legal aid providers should be represented, including LSC-funded and non-LSC-funded programs and pro bono programs.

Law schools are key Access to Justice partners in a number of states. Professors and students can serve as valuable resources. Many law schools are in fact civil legal assistance providers, through their clinical programs. Building support for equal justice in the next generation of attorneys should be a part of the Access to Justice effort.

A few states with well-established structures have been very successful in bringing in more diverse partners, including legislators, government executives, and representatives of the business, labor, education, and religious communities. By successfully making the case that equal justice should not be the concern or responsibility of the legal profession alone, they have obtained access to new resources, new ideas and perspectives, and broader support for their goals. Several newer Access to Justice efforts are also involving a broad range of partners. Other states should consider broadening their membership as a long-term goal as well.

2. **Formal structures that are accountable to more than one partner can be more secure than informal structures or structures accountable to only one partner.**

Informal structures or structures that are supported solely or primarily by one partner alone may lack the ability to survive in times of adversity. A state Access to Justice commission that is staffed by the bar but created by Supreme Court rule and made up of representatives appointed by different institutional constituencies is less likely to be vulnerable to funding or staffing cuts as the results of a change in bar leadership than is a bar Access to Justice

committee. While it may be possible to achieve a similar result by including a broad and diverse membership on a bar-based committee, entities that are accountable to a single institution are inherently more vulnerable. A bar-based effort is more likely to be secure if it receives contributions from other partners for staffing and expenses. Similarly, a provider-dominated group is less likely to win credibility and long-term support with the other partners.

**3. Judicial leadership — especially at the state Supreme Court level — greatly increases the effectiveness of Access to Justice initiatives.**

In a number of states, the chief justice or another state Supreme Court justice is an active leader in state Access to Justice initiatives. In several states, a justice is the co-chair or vice-chair of the state Access to Justice entity. The impact of Supreme Court leadership cannot be overstated. In addition to raising the visibility and credibility of the Access to Justice mission as a whole, Supreme Court leadership can greatly enhance the effectiveness of efforts to increase state funding for civil legal assistance, to increase pro bono activity, and to make the courts more accessible to low-income people. Federal District Court and Court of Appeals judges, who play a leading role in several states, can be similarly effective. More broadly, the involvement of the judiciary at all levels will enhance the effectiveness of Access to Justice efforts.

**4. Individual leadership is critically important for a successful Access to Justice effort.**

Building an effective structure is not enough. Strong leadership on the part of individuals will always be necessary for an Access to Justice effort to succeed.

One person can make a difference. In many states, the leadership of a single individual has been the catalyst for the successful launch, progress, or revitalization of an Access to Justice effort.

Leaders have emerged from a variety of different institutional roles — judges, bar officers, program directors, bar or bar foundation staff, and others. But many of the most effective leaders have been volunteers with no formal responsibility in this area, who simply developed an Access to Justice vision and brought others along. An individual's institutional role is far less important than the willingness to make a commitment to do what is necessary to further Access to Justice goals.

**5. New and emerging Access to Justice leaders should be cultivated.**

Building leadership within the Access to Justice structure itself is critically important. An Access to Justice effort that initially includes all the strongest supporters of the mission may find that three or four years later, when the original leaders are ready to move on, there is no one ready to take their place. This may occur when the sense of crisis or initial excitement associated with launching the effort is waning. The result can be a moribund Access to Justice effort.

Creating clear terms of office, with rotating leadership, can help to avoid this problem, while promoting activity and accomplishment — leaders will want to ensure that there are concrete achievements during their terms of office. On the other hand, terms need to be long enough to build expertise and relationships. Three-year terms for officers have generally worked well. Longer terms are appropriate for committee members. A good mix of long-term supporters and new blood can be ideal.

As part of an Access to Justice initiative, it can be valuable to create structures and contexts in which new leaders can emerge – for example, committees and work groups, open meetings, convocations, public hearings, and the like. People who have not previously been involved in a prominent role may respond to the Access to Justice vision and come forward as leaders.

**6. Institutional commitment is necessary on the part of each of the key partners. Each partner must work to build support within its own institutional base.**

As important as individual leadership is, development of strong institutional commitments is equally important. When bar presidents or executive directors, Supreme Court justices, or legal aid program directors are providing strong leadership, depth of institutional support may not seem to be of particular importance. But when those individuals move on, the failure to have invested energy in building strong and enduring support can put the effort at risk. Especially at state and local bar associations, the foundation of most successful efforts, building a culture and history of commitment to the Access to Justice mission is an important goal.

To ensure a successful, ongoing effort, each Access to Justice partner needs to take steps to build or maintain support for the effort within its institutional base. Bar leaders need to build support within the membership of their organizations; directors of legal aid programs, within their boards and staffs; jurists, among the judiciary and court personnel.

Individual leaders need to make clear what they are doing and why it is important. They should take as much care in crafting the message that they are sending to their own institutional base as the one they are sending to the state legislature, key decision-makers, and the public.

This challenge is especially important when an institutional partner is devoting institutional resources to Access to Justice – for example, when a bar entity takes on the burden of paying for Access to Justice staff. Making too big a commitment all at once can be risky. Leaders should be clear exactly what the resources are being used for and what they can reasonably be expected to achieve.

**7. Assessing and publicizing accomplishments is a key task.**

Assessing results and charting accomplishments is important to building support within the Access to Justice structure and the institutions that support it. Especially in a large state, it will be valuable to develop an annual plan and issue an annual assessment report.

Publicizing Access to Justice activities and accomplishments can too easily be overlooked. It's easy to assume that everyone knows everything that has been accomplished – but too often that is not the case, even within the membership of the Access to Justice group itself.

**8. Access to Justice leaders should chart a compelling vision but avoid creating unreasonable expectations.**

Setting a boldly ambitious goal can be an effective way to motivate participants in a campaign. Failure to articulate a compelling vision at the outset can result in failure of buy-in, energy and commitment on the part of potential partners. At the same time, creating unreasonable



expectations can be dangerous, leading to discouragement and a sense of failure when they are not fulfilled. In the messages they send to their constituents, Access to Justice leaders need to find a balance between these two competing concerns. This can be accomplished by setting reasonable interim goals while charting a bold long-term vision.

**9. An effective staff capacity is essential for a successful Access to Justice effort.**

While leadership roles can be filled by volunteers, staffing is necessary for adequate support, continuity, communications, and continued momentum.

Ideally, the staff person(s) should have Access to Justice as a sole, or at least primary, job responsibility and should report directly to the Access to Justice leadership. In practice, this will not always be possible, especially in a smaller state with few resources. Under these circumstances, it may be necessary for someone in an existing staff position to assume the Access to Justice responsibility. However, simply adding this responsibility to a staff person's existing duties is unlikely to be successful. Access to Justice groups should do whatever they can to find the resources to ensure that their efforts are staffed effectively.

Finding the right staff person can be difficult – the job requires significant interpersonal, communications, and political skills, the capacity to work effectively with a diverse group of volunteers, knowledge of the legal system and an understanding of the legal needs of low-income people. The skills, abilities, and energy level of the staff person are essential to the success of the Access to Justice effort. Above all, it is essential that the staff person have the full trust of all the institutional partners. A staff person who is viewed as primarily loyal to one institution – for example, the bar or the provider community – rather than the partnership as a whole, may not be effective.

**10. Access to Justice structures should carefully consider how best to obtain meaningful input from client communities.**

Every Access to Justice structure should find a way to obtain meaningful input from client communities. There is no single model or easy method for accomplishing this goal. While some client representatives and groups have called for individual client representation on Access to Justice entities, many experienced Access to Justice leaders believe individual representation is not an effective way to obtain client input, especially in light of the increasing diversity of client communities. In their view, legal aid providers can effectively bring to the table the insights of their client board members and the findings of their periodic needs assessment processes. In addition, leaders of social service agencies or organizations working in client communities, particularly when they come from those communities themselves, can offer particularly valuable perspectives and support. Each state Access to Justice entity should carefully consider how it will ensure that client points of view are heard and considered.

**11. Access to Justice structures should be open and inclusive and place a priority on developing trust among the partners.**

Just as each institutional partner has its strengths, each has its own particular institutional concerns, perspectives, and culture. Dedication to the shared goal of Equal Justice may not be

enough to prevent misunderstandings from arising among the partners. There is always a danger that a “them and us” attitude may develop, which can lead to serious divisions in a state’s justice community and do lasting damage to the Access to Justice cause. Processes that are perceived as closed or exclusive can exacerbate the danger.

All the partners in a state Access to Justice effort should be aware of this potential problem and work to overcome it. To move forward effectively, all the partners need to work hard to build relationships of trust with one another. No one partner should dominate the structure or the other partners.

Ideally, all the key institutional players should be at the table when plans and decisions are made. This will ensure that all the relevant information is available and that the judgments that are made are sound. It will promote buy-in from all the parties and minimize the potential for misunderstandings or feelings of exclusion.

Particularly in larger states, it may not be possible to function effectively without creating a formal structure based on representation – the table will simply not be big enough to include all the players. Leaders should work hard to ensure that the structure is truly representative and to solicit buy-in from all the parties. Meetings should be open to all, at least as observers. While operating in this manner may create logistical difficulties, avoiding the dangers associated with a process that is perceived as exclusive or closed will be worth the extra effort involved.

**12. Partners should place a priority on promoting cooperation and consensus within their own community and strive to speak with one voice in public.**

Disputes, lack of adequate communication, and failures of cooperation within partner communities can seriously damage Access to Justice efforts. Leaders must work within their own communities to avoid the negative consequences that can flow from such circumstances. In particular, diverse providers should place a priority on promoting cooperation and consensus. While debate and dissent may be inevitable – even helpful – within a community, turf, jealousy, and unnecessary competition will divert energy and undermine the cause. Leaders should try to keep the “big picture” of Access to Justice as a whole front and center at all times. In their public statements, they should strive to speak with one voice.

## Resources Available On-Line

# Student Loan Repayment Assistance Programs

### ABA Publications

Follow the "Loan Repayment Resources" link on the Documents and Resources page at [www.ATJsupport.org](http://www.ATJsupport.org).

***Lifting the Burden: Law Student Debt as a Barrier to Public Service: The Final Report of the ABA Commission on Loan Repayment and Forgiveness.*** Provides an analysis of the educational debt problem, discusses the impact of the problem on the legal profession and society, summarizes strategies that have been developed to help address the problem, and highlights some success stories using these methods. The Report includes ten conclusions about the debt burden issue and its impact on the profession and presents 19 detailed recommendations which, taken together, constitute a comprehensive package designed to provide relief for and incentives to lawyers who want to serve their communities through public service careers.

***State LRAP ToolKit: A Resource Guide for Creating State Loan Repayment Assistance Programs for Public Interest Lawyers.*** Contains information about creating statewide, as opposed to law school-specific, loan repayment assistance or forgiveness programs for lawyers pursuing public service legal jobs. The Tool Kit includes information about the existing programs, sample LRAP legislation with an analysis, guidance on creating an independent nonprofit organization to administer a program, and other resources to assist bar leaders, law deans and other stakeholders in creating these state programs.

***Meeting the Challenge of Law Student Debt: Loan Repayment Assistance Programs.*** A tri-fold brochure designed to promote law school LRAPs. Law school deans and/or administrators, such as directors of development and alumni relations offices, can use this brochure to educate potential donors about the importance of LRAPs.

## Legal Aid Recruitment and Retention

***The Quest for the Best: Attorney Recruitment and Retention Challenges for Florida Civil Legal Aid.*** Florida Bar Foundation, September, 2007. [www.flabarfndn.org](http://www.flabarfndn.org).

***Investing in Justice: A Framework for Effective Recruitment and Retention of Illinois Legal Aid Attorneys.*** Chicago Bar Foundation and the Illinois Coalition for Equal Justice. Search under Illinois at the bottom of the Documents and Resources page at [www.ATJsupport.org](http://www.ATJsupport.org).

***It's the Salaries, Stupid!...and Much more: The Developing National Crisis in the Delivery of Legal Aid.*** National Legal Aid and Defender Association. Based on a survey of attorneys aged 35 and under. [www.nlada.org/Civil/Civil\\_Sections/Loan\\_Repayment\\_Pensions](http://www.nlada.org/Civil/Civil_Sections/Loan_Repayment_Pensions).

***Equal Justice Works.*** Many resources about new federal legislation, law school debt statistics, guides for improving LRAPS, law schools with LRAPS, employers LRAPS, and other topics. [www.equaljusticeworks.org](http://www.equaljusticeworks.org).

***NALP: The Association for Legal Career Professionals.*** Conducts research on legal salaries. The 2006 study on public sector and public interest attorney salaries will be updated soon. [www.nalp.org](http://www.nalp.org).

**TAB 3**

00067



**NEVADA SUPREME COURT  
ACCESS TO JUSTICE COMMISSION**

The Supreme Court Access to Justice Commission is seeking lawyers to participate on Committees which are part of this Commission. Participation will be by appointment only. AJC is seeking lawyers who have the time and interest in the work of the AJC. No prior experience working on a local or state committee is required. The AJC requires an eagerness to help those less fortunate in Nevada get access to the courts and the legal system.

The AJC was created to:

- 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.

Under SCR 15, the Access to Justice Commission directly creates and appoints its committees. At present, there is no minimum or maximum membership and appointments are made as deemed necessary and proper. The Co-Chairs, Chief Justice Hardesty and Justice Michael Douglas, have deemed expansion of all Committees to be appropriate at this time and therefore will be making appointments in the next quarter. The Commission may also add new Committees and/or working groups, and consider expansion of the Commission itself, in future.

Communications	Development	Legal Services Delivery	Rural Services Delivery
<b>Focus</b>			
marketing and communication of Commission programs and initiatives to the membership and the public where appropriate	develop viability of funding for new programs, or identify potential sources of future funding from existing sources for Commission initiatives and programs	state-wide delivery of civil legal services, recognition programs for pro bono programs and attorneys, and outreach to the legal community on emergent issues. This Committee is generally intended for legal services professionals currently involved in part of the continuum of care for civil legal aid in Nevada.	New committee, Feb 2009. Anticipated focus will be on the provision of legal services to rural communities, with emphasis on technology-based solutions and increased pro bono lawyer participation. This group will work closely with the existing AOC Rural Court Technology project.
<b>Current projects</b>			
Needs Assessment Marketing; Public Interest Lecture Series; Recruitment and Retention; Mandatory Reporting; Website expansion	Loan Assistance LRAP; Division of Aging Funding concerns; Court Posted Fees : Real Estate Escrow Funds; Recruitment/Retention; Fellowship; Cy Pres	Pro Bono Recognition National Pro Bono Week; mandatory reporting; Statewide Award; Emeritus; Self Help; Standardized Forms; Standardized Reporting (provider statistics); Law Firm initiatives	t/b/d

**NEVADA SUPREME COURT ACCESS TO JUSTICE**

**STANDING COMMITTEES**

Updated 4.2009

**RURAL SERVICES DELIVERY** *est. April 2009*

Justice Douglas  
Amber Candelaria  
Valerie Cooney  
Judge Dahl  
Judge Davis  
Judge Dory  
Judge Fletcher  
Anne Heck (AOC)  
Anna Johnson  
Judge Lane  
Judge Maslach  
John McCormick (AOC)  
Sheryl Overstreet (AOC)  
Judge Papez  
Judge Puccinelli  
Judge Wagner  
Judge Wambolt

**COMMUNICATIONS**

Needs Assessment Marketing  
Public Interest Lecture Series  
Recruitment and Retention  
    LRAP- Development  
    Fellowships- LSD  
    Benefits and Salaries- LSD  
Mandatory Reporting  
Website

David Thronson  
Judge Gonzalez  
Kimberly Abbott  
Brett Kandt  
Judge Doherty  
Christine Smith  
William Heavilin  
Trevor Hayes

Scott Roedder- ex officio

**DEVELOPMENT**

IOLTA comparability/minimum standards  
LRAP  
Recruitment/Retention  
    2009 Fellowship- Thronson  
    LRAP- work group Lynn, Anna, Valerie  
    Retirement/benefits/salaries- Paul

Deferred to 2010:  
    Cy Pres-Paul  
    Division of Aging Funding concerns  
    Court Posted Fees  
        Nye County  
    Real Estate Escrow Funds

Ernie Nielsen  
Paul Elcano  
Valerie Cooney

Nancy Becker  
Anna Johnson  
Cam Ferenbach  
Tom Warden  
Lynn Etkins  
Suzy Baucum  
David Thronson

### LEGAL SERVICES DELIVERY

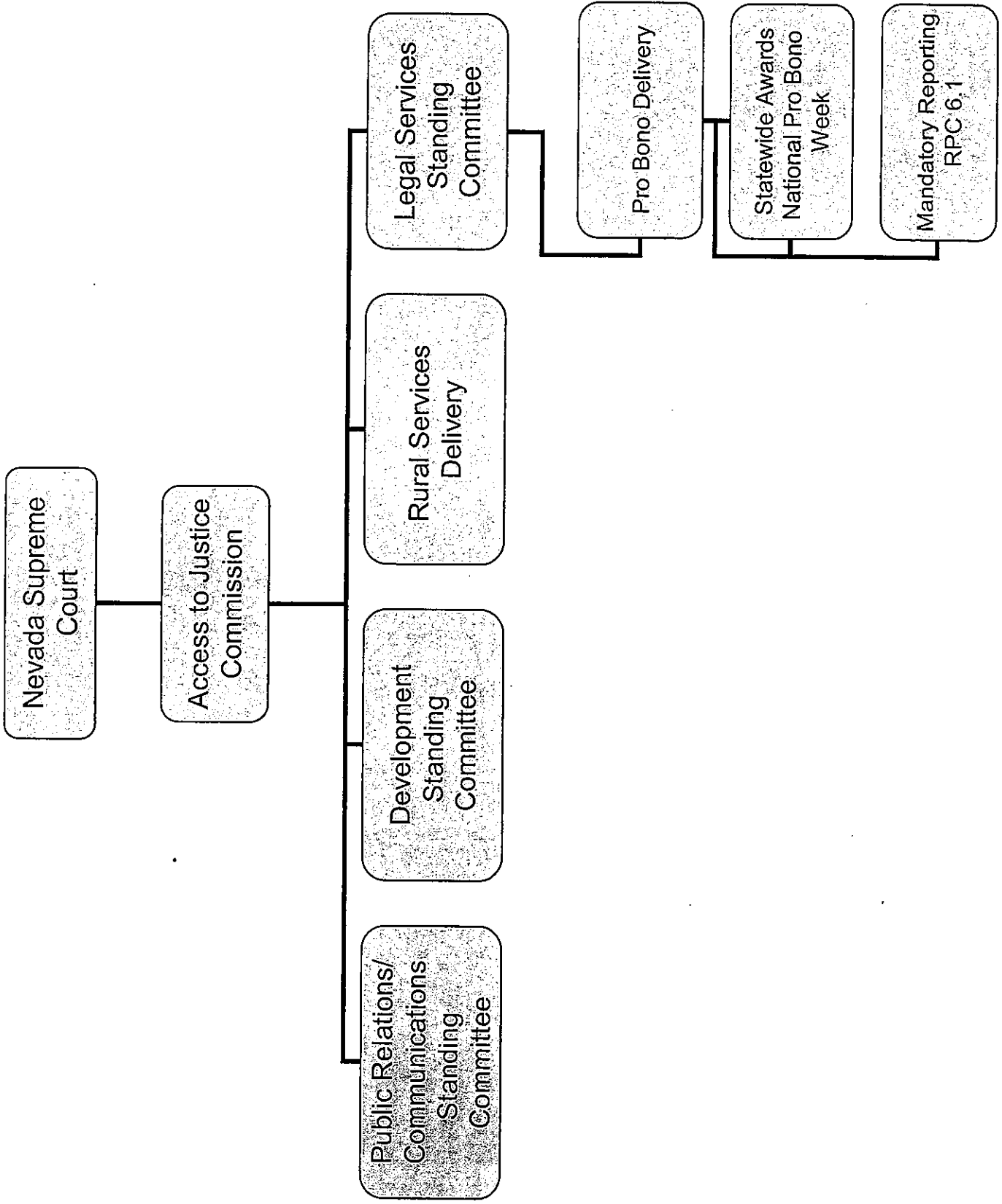
Pro Bono Recognition  
Pro Bono Week- also with Communications  
State Wide Award- Renee  
Nevada Lawyer  
Emeritus- Kimberly  
Self Help  
Standardized Forms-Justice Douglas, Chair, Supreme Court Library Commission  
Hotlines, continuum of care issues  
Standardized Reporting (provider statistics)  
Law Firm initiatives

Paul Elcano (ED)  
Sugar Vogel (ED)  
John Desmond  
Kimberly Abbott  
Judge Steinheimer  
AnnaMarie Johnson (ED)  
Ernie Nielsen (ED)-Chair  
Valerie Cooney (ED)  
Judge Puccinelli  
Barbara Buckley (ED)  
Lynn Etkins  
Odessa Ramirez  
Renee Kelly  
Christopher Reade  
Amber Candelaria

### FUND DISTRIBUTION

TBD

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





**TAB 4**

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Nevada Law Foundation  
Revenue Stream  
2008-2009

**IOLTA:**

2009 IOLTA REVENUE:	1/1/09-5/31/09	\$761,670.87
2008 IOLTA REVENUE:	1/1/08-5/31/08	<u>\$512,569.47</u>
INCREASE		\$249,101.40

**SILVER BALL:**

2009 SILVER BALL REVENUE:	\$125,810.00
SILVER BALL EXPENSES:	<u>\$ 73,863.64</u>
NET INCOME:	\$ 51,946.36

2008 SILVER BALL REVENUE:	\$ 99,030.00
SILVER BALL EXPENSES:	<u>\$ 63,207.67</u>
NET INCOME:	\$ 35,822.33

**COLLEAGUE:**

2009 COLLEAGUE PLEDGES:	\$ 92,500.00
2008 COLLEAGUE PLEDGES:	\$ 18,250.00

2009 Bank IOLTA Rates

Name of Bank	January Interest Rates		# of active accounts	February Interest Rates		# of active accounts	March Interest Rates		# of active accounts	April Interest Rates		# of active accounts	May Interest Rates		# of active accounts
	High	Low		High	Low		High	Low		High	Low		High	Low	
Bank of America	0.0030%	0.0010%	446	0.0030%	0.0010%	447	0.0030%	0.0010%	447	0.0030%	0.0020%	459	0.0040%	0.0020%	459
Bank of Georgia	2.14%	2.14%	12	2.14%	2.14%	12	2.14%	2.14%	12	2.14%	2.14%	9	2.14%	2.14%	9
Bank of Las Vegas	0.25%	0.25%	7	0.25%	0.25%	7	0.25%	0.25%	7	0.25%	0.25%	7	0.25%	0.25%	7
Bank of Nevada	2.00%	2.00%	235	2.00%	2.00%	235	2.00%	2.00%	235	2.00%	2.00%	191	2.00%	2.00%	191
Bank of North Las Vegas	0.50%	0.50%	5	0.50%	0.50%	5	0.50%	0.50%	5	0.50%	0.50%	4	0.50%	0.50%	4
Bank of the West	0.10%	0.06%	27	0.25%	0.10%	27	1.20%	0.10%	28	1.20%	0.10%	29	1.20%	0.10%	29
Black Mountain Community Bank	0.0050%	0.0050%	3	0.0050%	0.0050%	3	0.0050%	0.0050%	3	0.0030%	0.0030%	3	0.0025%	0.0025%	3
Boulder Dam Credit Union	2.50%	2.50%	1	2.00%	2.00%	1	2.00%	2.00%	1	1.50%	1.50%	1	1.50%	1.50%	1
Carson River Community Bank	0.75%	0.75%	1	0.75%	0.75%	1	0.75%	0.75%	1	0.75%	0.75%	1	0.75%	0.75%	1
Citibank	0.0042%	0.0042%	28	0.60%	0.10%	27	0.60%	0.10%	27	0.60%	0.10%	27	0.60%	0.10%	27
City National Bank	0.50%	0.20%	29	0.50%	0.20%	21	0.59%	0.20%	21	1.00%	1.00%	24	1.00%	1.00%	24
Clearstar Credit Union	1.00%	1.00%	1	1.00%	1.00%	1	1.00%	1.00%	1	1.00%	1.00%	2	1.00%	1.00%	2
Colonial Bank	2.44%	0.49%	1	2.44%	0.49%	1	2.44%	0.49%	1	2.44%	0.49%	1	2.44%	0.49%	1
Community Bank of Nevada	0.20%	0.19%	10	0.20%	0.19%	7	0.20%	0.19%	8	0.20%	0.19%	6	0.20%	0.19%	5
Desert Community Bank	2.00%	2.00%	47	2.00%	2.00%	47	2.00%	2.00%	47	2.00%	2.00%	42	2.00%	2.00%	42
Financial Horizons Credit Union	1.00%	0.25%	6	0.75%	0.15%	6	0.75%	0.15%	6	0.10%	0.10%	6	0.50%	0.10%	6
First Asian Bank	1.34%	0.25%	1	1.34%	0.25%	1	1.34%	0.25%	1	1.34%	0.25%	1	1.34%	0.25%	1
First Commerce Bank	2.00%	2.00%	3	2.00%	2.00%	3	2.00%	2.00%	3	2.00%	2.00%	3	2.00%	2.00%	3
First Independent Bank	0.50%	0.50%	1	0.50%	0.50%	1	2.15%	2.00%	1	2.15%	2.00%	1	2.15%	2.00%	1
First Republic Bank	2.00%	2.00%	15	2.00%	2.00%	16	2.00%	2.00%	17	2.00%	2.00%	17	2.00%	2.00%	16
First Security Bank of Nevada	1.00%	1.00%	1	1.00%	1.00%	1	1.00%	1.00%	1	1.00%	0.50%	1	1.00%	0.50%	1
Great Basin Bank of Nevada	0.25%	0.25%	4	0.25%	0.25%	4	0.25%	0.25%	5	0.25%	0.25%	5	0.25%	0.25%	5
Heritage Bank	0.10%	0.10%	7	2.00%	2.00%	7	2.00%	2.00%	7	2.00%	2.00%	7	2.00%	2.00%	7
Irwin Union	1.98%	0.10%	17	2.00%	2.00%	17	2.00%	2.00%	17	2.00%	2.00%	18	2.00%	2.00%	18
Meadows Bank	2.13%	2.13%	8	2.00%	0.10%	8	2.00%	0.10%	9	2.00%	0.10%	10	2.00%	0.10%	10
M&I Bank	0.15%	0.15%	4	2.13%	2.13%	4	2.13%	2.13%	4	2.13%	2.13%	3	2.13%	2.13%	3
Mutual of Omaha Bank(1st national)	0.15%	0.15%	4	0.15%	0.15%	4	0.15%	0.15%	4	0.15%	0.15%	4	0.15%	0.15%	4
	1.98%	1.701%	23	2.00%	2.00%	24	2.00%	2.00%	24	2.00%	2.00%	23	2.00%	2.00%	24

\* Bold lettering signifies preferred banks

2009 Bank IOLTA Rates

Name of Bank	January Interest Rates		# of active accounts	February Interest Rates		# of active accounts	March Interest Rates		# of active accounts	April Interest Rates		# of active accounts	May Interest Rates		# of active accounts
	High	Low		High	Low		High	Low		High	Low		High	Low	
Nevada Bank & Trust	0.20%	0.20%	1	0.20%	0.20%	1	0.20%	0.20%	1	0.20%	0.20%	2	0.20%	0.20%	2
Nevada Commerce Bank	2.00%	2.00%	5	2.00%	2.00%	5	2.00%	2.00%	5	2.00%	2.00%	5	2.00%	2.00%	5
Nevada Security Bank	0.30%	0.05%	3	0.30%	0.05%	3	0.30%	0.05%	3	0.30%	0.05%	2	0.30%	0.05%	2
Nevada State Bank	1.40%	1.40%	281	1.40%	1.40%	281	0.50%	0.50%	281	0.50%	0.50%	15	0.50%	0.50%	15
Paramount Bank	0.75%	0.75%		0.75%	0.75%		0.75%	0.75%		0.75%	0.75%	1	0.75%	0.75%	1
Red Rock Community Bank	2.00%	2.00%	8	2.00%	2.00%	9	2.00%	2.00%	9	2.00%	2.00%	9	2.00%	2.00%	9
Service First Bank	2.00%	2.00%	5	2.00%	2.00%	5	2.00%	2.00%	5	2.00%	2.00%	4	2.00%	2.00%	4
Southwest USA	2.00%	2.00%	2	2.00%	2.00%	2	2.00%	2.00%	2	2.00%	2.00%	2	2.25%	2.00%	2
Sun West	0.50%	0.50%	2	0.50%	0.50%	2	0.50%	0.50%	2	0.50%	0.50%	2	0.50%	0.50%	2
U.S. Bank	0.2253%	0.1178%	135	0.2253%	0.1178%	135	0.2253%	0.1178%	136	0.2252%	0.1217%	137	0.2252%	0.1217%	137
Wachovia Bank	0.0010%	0.0010%	2	0.0010%	0.0010%	2	0.0010%	0.0010%	3	0.0010%	0.0010%	1	0.0010%	0.0010%	1
Washington Mutual	0.60%	0.01%	42	0.60%	0.01%	38	0.60%	0.01%	45	0.60%	0.01%	47	0.60%	0.01%	46
Wells Fargo	0.30%	0.30%	505	0.30%	0.30%	576	0.30%	0.30%	498	0.30%	0.30%	491	0.30%	0.30%	493

\* Bold lettering signifies preferred banks

**IOLTA REVENUE (AGGREGATE) COMPARISON CHART**  
AS OF MAY 2009

NAME OF BANK	NO. OF PROSPECTED ACCTS. BANK YEAR	CURRENT HIGH INST. RATE	CURRENT LOW INST. RATE	MONTHS														
				Oct-07	Nov-07	Dec-07	Jan-08	Feb-08	Mar-08	Apr-08	May-08	Jun-08	Jul-08	Aug-08	Sep-08	Oct-08	Nov-08	Dec-08
Wells Fargo	504	0.30%	0.30%	\$20,786.14	\$21,255.70	\$20,476.78	\$20,979.92	\$20,770.20	\$19,544.08	\$20,979.66	\$25,403.88	\$23,765.14	\$25,146.02	\$31,467.70	\$25,762.72	\$37,874.67	\$30,886.36	\$30,308.02
Bank of America	403	0.00%	0.00%	\$21,144.78	\$21,809.12	\$20,590.35	\$18,436.87	\$19,319.39	\$25,526.55	\$19,227.92	\$20,571.19	\$21,844.95	\$24,164.60	\$24,332.92	\$23,202.23	\$32,043.26	\$14,481.60	\$12,849.00
Bank of Nevada*	191	2.00%	2.00%			\$2,288.83	\$7,178.26			\$58,815.73					\$148,355.19		\$195,428.35	
Nevada State Bank*	141	0.50%	0.50%				\$12.13					\$2,163.53	\$337.31	\$145.39	\$71,599.04	\$121,043.99		
U.S. Bank	133	0.25%	0.27%	\$18,278.50	\$17,559.68	\$18,080.10	\$17,435.04	\$12,125.21	\$10,423.75	\$7,089.87	\$5,879.49	\$5,640.94	\$5,534.99	\$5,821.61	\$8,086.25	\$6,553.10	\$4,185.70	\$4,195.70
Washington Mutual	46	0.6%	0.01%	\$51.22	\$88.63	\$88.23	\$91.13	\$82.46	\$78.50	\$52.11	\$22.72	\$293.19	\$417.66	\$382.57	\$274.47	\$185.74	\$176.52	\$178.33
Community Bank of Nevada **	34	2.00%	2.00%	\$12,595.83		\$7,406.53				\$4,722.67					\$3,413.76		\$26,410.08	
Chly National Bank	28	1.00%	1.00%	\$5,831.22	\$5,330.94	\$5,480.74	\$4,741.25	\$7,320.36	\$7,332.37	\$7,182.56	\$5,477.66	\$3,808.73	\$2,004.47	\$3,383.87	\$3,546.86	\$3,691.49	\$6,551.01	
Citibank	28	0.80%	0.10%	\$4,886.20	\$4,416.97	\$4,658.76	\$3,287.48	\$3,838.04	\$3,567.86	\$6,573.86	\$4,083.45	\$5,213.43	\$4,083.45	\$5,470.13	\$5,591.73	\$4,139.65	\$1,967.05	
Bank of the West	28	1.20%	0.10%	\$75.22	\$95.64	\$67.30	\$81.71	\$81.59	\$89.44	\$717.95	\$658.49	\$801.19	\$816.83	\$688.47	\$948.42	\$907.40	\$905.06	
Metrol of Omaha*	23	2.00%	2.00%	\$4,134.30	\$4,021.94	\$4,632.75	\$3,483.97	\$2,644.72		\$3,801.66	\$4,788.05	\$2,983.32	\$2,655.55	\$1,356.55	\$1,035.66	\$1,744.72	\$5,105.10	\$10,502.48
Heritage Bank*	16	2.00%	2.00%	\$956.56		\$2,270.75				\$2,270.75		\$2,487.11				\$4,588.58	\$4,415.12	
First Independent Bank *	16	2.00%	2.00%	\$154.45		\$97.75	\$82.96	\$65.51	\$68.13	\$77.02	\$28.10	\$35.51	\$24.82	\$76.91	\$1,834.82	\$1,539.02	\$1,037.88	
First Union*	10	2.00%	0.10%	\$20.19	\$20.35	\$15.55	\$12.92	\$14.03	\$42.64	\$90.26	\$80.54	\$41.52	\$28.08	\$47.99	\$650.88	\$265.61	\$259.50	
Bank of Georgia **	9	2.14%	2.14%			\$2,423.69				\$2,423.69		\$3,731.12			\$6,716.95		\$19,437.05	
Great Basin Bank	8	0.6%	0.6%	\$389.69														
Bank of Las Vegas	8	0.25%	0.25%	\$40.48	\$59.87	\$61.53	\$54.72	\$25.47	\$32.73	\$26.16	\$76.13	\$65.62	\$84.68	\$78.73	\$102.08	\$124.07	\$104.55	\$104.55
Red Rock Community Bank *	8	2.00%	2.00%	\$719.55	\$188.70	\$154.02	\$108.76	\$102.48	\$111.09	\$99.30	\$100.55	\$154.50	\$248.84	\$200.83	\$151.47	\$118.05	\$151.70	
Desert Community Bank	6	0.50%	0.10%	\$40.48	\$37.54	\$36.26	\$39.87	\$20.89	\$20.77	\$18.76	\$92.43	\$85.84	\$90.97	\$94.26	\$95.03	\$107.45	\$47.03	
Colonial Bank	5	0.2%	0.1%	\$0.22	\$12.63							\$9.53	\$181.43	\$188.56	\$188.15	\$128.41	\$193.72	
Nevada Commerce Bank **	5	2.00%	2.00%	\$2,749.91		\$1,564.13			\$1,062.83		\$28.10	\$35.51	\$24.82	\$76.91	\$1,558.13	\$1,168.88		
First Security Bank of Nevada	5	0.25%	0.25%	\$682.16		\$181.36			\$56.78	\$35.88	\$31.48	\$35.85	\$29.49	\$57.49	\$214.96	\$388.93	\$311.27	
Bank of North Las Vegas*	4	0.5%	0.5%			\$4,372.21			\$2,516.65		\$1,499.50		\$1,499.50	\$1,740.75	\$2,230.64		\$2,230.64	
M & Bank*	4	0.15%	0.15%	\$330.87		\$356.21			\$1,189.76		\$248.21		\$248.21	\$407.48	\$407.48		\$185.00	
Service First Bank **	4	2.00%	2.00%	\$762.60		\$288.59			\$288.59		\$335.98		\$335.98	\$17.37	\$15.09	\$15.36	\$9.54	
Black Mountain Community Bank	3	0.0025%	0.0025%	\$15.51	\$10.14	\$12.04	\$12.90	\$9.49	\$15.34	\$10.81	\$13.25	\$10.81	\$11.41	\$14.03	\$17.37	\$15.09	\$15.36	
First Aahin Bank **	3	2.00%	2.00%	\$4.88	\$4.88	\$151.37			\$453.20		\$181.39		\$975.59	\$733.63	\$733.63		\$1,407.56	
Mendocino Bank **	3	2.13%	2.13%											\$117.72		\$395.35		
Nevada Security Bank*	2	0.6%	0.6%	\$122.40		\$231.68			\$445.83					\$181.43		\$100.95	\$6.40	
Clark County Credit Union*	2	1.60%	1.60%											\$189.21		\$100.95	\$6.40	
Nevada Bank & Trust*	2	0.20%	0.20%			\$150.46			\$150.46					\$189.21		\$100.95	\$6.40	
Southwest USA	2	2.25%	2.00%	\$402.47	\$487.04	\$674.12	\$555.14	\$521.48	\$702.91	\$772.72		\$686.17	\$916.07	\$957.30	\$724.47	\$776.80	\$989.05	\$716.32
Sun West*	2	0.5%	0.5%												\$1,006.02			
Wrachota	2	0.0010%	0.0010%															
Creson River Community Bank*	1	0.7%	0.7%												\$10.92			
Clearstar Credit Union	1	2.4%	0.4%							\$25.54	\$48.19	\$57.72	\$61.54	\$58.95	\$87.48	\$82.15	\$47.56	
Financial Horizons Credit Union	1	1.34%	0.25%										\$108.04	\$156.34	\$146.83	\$136.14	\$99.80	
First Commerce Bank	1	2.1%	2.0%	\$27.47	\$20.55	\$22.56	\$23.85	\$16.72	\$17.31	\$15.32	\$15.50	\$13.08	\$13.57	\$10.27	\$9.53	\$5.94	\$5.91	
Paramount Bank	1	0.7%	0.7%											\$48.27	\$53.27	\$1.60	\$24.34	
First Republic Bank	1	1.00%	0.50%	\$335.02	\$359.29	\$406.06	\$393.38	\$281.21	\$241.72	\$163.52	\$163.52	\$167.12	\$152.35	\$148.76	\$145.31	\$147.51	\$80.11	\$82.20
Boulder Dam Credit Union*	1	1.50%	1.50%			\$976.63											\$1,300.33	
1756				\$85,199.89	\$76,863.90	\$75,226.95	\$187,594.30	\$64,431.09	\$68,878.98	\$138,207.75	\$71,656.88	\$70,745.24	\$147,275.54	\$75,028.18	\$145,193.86	\$258,125.82	\$75,756.76	\$174,248.48

\* Partner banks  
^ indicates quarterly remittances

**IOLTA Team Report 2008**

<u>IOLTA TEAM</u>	<u>Date of Contact</u>	<u>Firms Contacted</u>	<u>Status</u>	<u>Banks Contacted</u>	<u>Status</u>
Robert Eglert	12/15-19/2008	Aaron & Paternoster Benson, Bertoldo, Baker & Carter Dallas Horton & Associates Gage & Gage Ganz & Hauf George Bochanis & Associates Gerry Gillock Hennes & Haight Hutchinson & Steffen Jimmerson & Hansen Manny Arin & Associates Marquis & Aurbach Muije & Varricchio Paul Powell Richard Harris & Associates Robert Marshall & Associates Robert Murdock Shook & Stone Vannah & Vannah		City National Bank First Asian Bank	Will increase rates Will increase rates
	1/23/2009			City National Bank	Working on offer
Paul Elcano	12/15-19/2008	Bruce Beesley Jones Vargas (Sande, Desmond) Justice Hardesty Lewis & Rocha Jones Vargas (Sande, Desmond)		Nevada State Bank	
Robert Maddox	12/15-19/2008	Dee Hopper Randall Jones			

## IOLTA Team Report 2008

	Scott Canepa Sergio Salzano Will Kemp				
	Scott Canepa Dave Pursiano Charles Litt Angius & Terry Hopper Lynch Salzano	1/27/2009	Will move to Preferred Bank Will move to Preferred Bank Will move to Preferred Bank Will move to Preferred Bank Will move to Preferred Bank		
David McElhinney	Lewis Roca Bruce Beesley Kent Robison Law Offices of Curtis Coulter	12/15-19/2008		Kevin Sullivan Nevada State Bank	
Suzan Baucum	Ann Price McCarthy Curtis Coulter Jimmerson Hansen Megan Dorsey	12/15-22/2008		Bank of George Community Bank City National First Asian	Will increase to 2.14 for 1 year Will increase to 2.0 for 1 year Rate offer by January 2009 Will increase to 2.0 for 1 year Did not know they had been removed from applist
	Koeller Nebeker	12/22/2008	Will change banks	Will Parker Nevada State Community Bank of Nevada Bank of George	Offer received 12/22/08 Offer received 12/22/08
	Jolley Urga	1/7/2009	will get back to me		
		1/8/2009		Bank of Las Vegas Red Rock Community Bank Heritage Bank of Nevada	Will increase to 2.0 Will make offer

## IOLTA Team Report 2008

				Desert Community Bank	
				Black Mountain Comm Bank	
				Service 1st	Will increase to 2.0
	1/9/2009			Service 1st	Offer received 1/8/09
	1/13/2009			Bank of Nevada	
	1/23/2008			First Asian Bank	Offer received 1/13/09
				City National Bank	working on offer
				Heritage Bank of Nevada	Questions regarding TLGP
	1/23/2009			Red Rock Community Bank	Offer received 1/22/09
	1/26/2009			Nevada Commerce Bank	Discussion re Preferred
		Dallas Horton			
				Nevada Commerce Bank	Offer received 1/26/09
Suzan Baucum	1/30/2009			Rick James Capital Bancorp	Discussions re various banks
	1/30/2009			Irwin Union	Discussions re interest rate
Robert Maddox	2/1/2009		Canepa Reidy Rubino		
			David Pursiano	Bank discussions cont.	
			Feinberg Grant	Bank discussions cont.	
			Hopper Lynch	Bank discussions cont.	
			Aaron & Paternoster	Bank discussions cont	
			Henness & Haight	Bank discussions cont	
Eglet/Baucum	2/2/2009				
			Wolfenzen Schulman & Ryan	Bank discussions cont	
			Lee Roberts/Weinberg Wheeler	Bank discussions cont	
			Louis Palazzo	Bank discussions cont	
	2/3/2009			Bob Glaser City National	Questions regarding offer
Eglet/Baucum	2/4/2009		Hutchison & Steffen		
			Tom Kummer	Bank discussions cont	
			Pyatt Silvestri	Bank discussions cont	
Eglet/Baucum	2/9/2009			Bob Glaser City National	Questions regarding Offer



## IOLTA Team Report 2008

		Bruce Tingey	Bank discussions cont	
Eglet/Baucum	2/18/2009			Bob Glaser City National Questions regarding offer
Suzan Baucum	2/18/2009			Kathy Jumper 1st Commerce Heritage National Offer Received 2/19/2009
Suzan Baucum	2/24/2009			Irwin Union Bank Disc re drop in interest rate Kathy Jumper 1st Commerce Offer Received 2/24/2009
Suzan Baucum	3/4/2009			Meadows Bank Discussion re Preferred program
Suzan Baucum	3/19/2009			City National Questions regarding offer Meadows Bank Offer Received 3/19/2009
David McElhinney	3/24/2009	Debby Lumkes	re Bank of the West	Washington Mutual Discussion re Preferred Program
Suzan Baucum	3/25/2009	Debby Lumkes	re Bank of the West	
Suzan Baucum	3/26/2009			Bob Glaser City National Offer received needs approv
	4/1/2009			Irwin Union Discussion re drop in interest
	4/8/2009			Patty Covarrubias Bank of the West Discussion re preferred program
	4/15/2009			Southwest USA will make offer
	4/22/2009			Mary Rourke Nv State Bank IOLTA data/reports/interest
	4/27/2009			Mary Rourke Nv State Bank IOLTA data/reports/interest
				Mary Rourke Nv State Bank IOLTA data/reports/interest
				Mary Rourke Nv State Bank IOLTA data/reports/interest
				Judith Lindsay Nv State Bank IOLTA data/reports/interest
				Bob Glaser questions re offer status
	5/1/2009			Patty Covarrubias Bank of the West Discussion re preferred program

## IOLTA Team Report 2008

Chambers & Selik                      Moved to preferred  
 Chesnoff                                  Moved to preferred  
 Rinato                                        Moved to preferred  
 Ross Law Group                        Moved to preferred  
 Robert C. Maddox                      Moved to preferred  
 Maddox Cisneros                        Moved to preferred  
 Scott Freeman                            Moved to preferred  
 Nevada Injury Lawyers                Moved to preferred

**Suzan Baucum**

5/18/2009

Mary Rourke Nv State Bank  
 Washington Mutual  
 Mary Rourke Nv State Bank  
 Southwest USA  
 Mary Rourke Nv State Bank

IOLTA data/reports/interest  
 Continued discussion re rates  
 in the process  
 IOLTA data/reports/interest

6/3/2009

Rourke/Lindsay Nv State Bank  
 Washington Mutual  
 Joe Iwanicki First Republic Bank

Discussions for IOLTA training  
 Cont discussions  
 IOLTA /rate/discussions

6/8/2009

Boulder Dam Credit Union  
 Irwin Union  
 Patty Covarrubias Bank of the West

IOLTA rate discussions  
 Interest rate discussions  
 Discussion re preferred program

6/23/2009

7/1/2009

7/2/2009





MAINOR EGLET COTTLE  
T R I A L L A W Y E R S

Robert T. Eglet  
Robert W. Cottle\*  
Tracy A. Eglet†  
Robert M. Adams  
Bradley S. Mainor  
David A. Tanner▲  
Jonathan T. Rimmel\*  
Lesley B. Miller  
Bradley J. Myers♦  
Marni K. Rubin  
Joseph J. Wirth  
Brice J. Crafton

July 7, 2009

VIA HAND DELIVERY

Kristina Marzec, Director  
Access to Justice Commission  
State Bar of Nevada  
600 E. Charleston Blvd.  
Las Vegas, NV 89104

Re: NRCPC Rule 38

\*Also admitted in Utah  
† Also admitted in Ohio  
▲ Also admitted in Texas  
♦ Also admitted in Arizona

Dear Kristina:

At the last Access to Justice Commission meeting, I requested on behalf of the Nevada Law Foundation and the legal providers that the Access to Justice Commission join in our request to have the Supreme Court amend NRCPC Rule 38 in order to provide additional and consistent funding for Nevada's legal aid needs. Within this modification, it is requested that the party demanding the trial by jury shall make a non-refundable payment of \$300.00 to the Nevada Law Foundation. Also, if a written jury questionnaire is requested, and is approved by the Court, the party or parties requesting the written jury questionnaire shall make a non-refundable payment of \$1,000.00 to the Nevada Law Foundation. Prior to the submission of the written jury questionnaires to the Jury Commissioner, the party or parties who requested the written jury questionnaire shall make an additional payment of \$15.00 to the Nevada Law Foundation for each written jury questionnaire to be completed by a potential juror. All payments made to the Nevada Law Foundation, pursuant to this section, are non-refundable. The Nevada Law Foundation shall disburse these funds to the Nevada legal service providers providing legally related services to the poor, to victims of domestic violence, and to children protected by or in need of protection of the juvenile court, as specified in Supreme Court Rule 216. For your review, enclosed please find the following:

- 1) Nevada Rules of Civil Procedure:  
Current Rule 38. Jury Trial of Right
- 2) Nevada Rules of Civil Procedure:  
*Proposed Modified Changes* to Rule 38: Jury Trial of  
Right

- 3) Annual Revenue Projection if a Jury Demand is filed in 50% of civil case filings under the Proposed Modified Changes to NRCP Rule 38;
- 4) Annual Revenue Projection if a Jury Demand is filed in 60% of civil case filings under the Proposed Modified Changes to NRCP Rule 38;
- 5) Annual Revenue Projection if a Jury Demand is filed in 70% of civil case filings under the Proposed Modified Changes to NRCP Rule 38;
- 6) Annual Revenue Projection if a Jury Demand is filed in 80% of civil case filings under the Proposed Modified Changes to NRCP Rule 38;

Included in the Projection tables are the number of civil cases *only* filed in each county in the State of Nevada, for the fiscal years of 2007-2008. The 2009 fiscal year civil cases filed by county will not be available for several weeks. There is no specific tracking of the number of jury demands filed in each county, each year, that I have been able to find. These numbers are for civil filings only. They do not include criminal, family, juvenile or traffic cases filed. The revenue projections assume from 50% to 80% of the cases filed, had jury demands filed. After reviewing the projections, you will see how much money can be raised in an effort to assist the underprivileged in the State of Nevada.

Based upon the 2008 fiscal year civil filings, at \$300 per jury demand, we would be able to generate the following annual revenue assuming jury demands were filed at the rates set forth below:

- |                         |                         |
|-------------------------|-------------------------|
| 1) 50% = \$5,160,600.00 | 3) 70% = \$7,224,840.00 |
| 2) 60% = \$6,192,720.00 | 4) 80% = \$8,256,960.00 |

At the last Access to Justice Commission meeting, the primary concern seemed to be making sure these fees could be waived in cases involving indigent parties and parties being represented by legal aid providers or pro bono. I believe this can be accomplished by simply writing these exceptions into the rule.

Kindest personal regards,

MAINOR EGGLETT COTTLE

Robert T. Eglet

/rte  
Encl. as stated

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PROPOSED MODIFIED RULE

RULE 38. Jury trial of right

(a) Right preserved. The right of trial by jury as declared by the Constitution of the State or as given by a statute of the State shall be preserved to the parties inviolate.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving as required by Rule 5(b) upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than the time of the entry of the order first setting the case for trial.

(c) Same: Specification of issues. In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver; payment of fees for jury demand and written jury questionnaire. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) and to submit the fee required by this rule constitutes a waiver by the party of trial by jury. At the time a demand is filed as required by Rule 5(d), the party demanding the trial by jury shall make a non-refundable payment of \$300.00 to the Nevada Law Foundation. Proof of said jury demand payment must be filed within 3 judicial days of filing the demand. Failure of a party to file proof of jury demand payment within three judicial days of filing the demand constitutes a waiver by the party of trial by jury. If the Court approves the use of a written jury questionnaire, within 3 judicial days of written notice of the court approving the written jury questionnaire, the party or parties who requested the written jury questionnaire shall make a non-refundable payment of \$1,000.00 to the Nevada Law Foundation. Proof of said payment to the Nevada Law Foundation must be filed within 3 judicial days of payment. Prior to submission of the written jury questionnaires to the jury commissioner the party or parties who requested the jury questionnaire shall make an additional payment of \$15.00 to the Nevada Law Foundation for each written jury questionnaire to be completed by a potential juror. Proof of said payment for each written jury questionnaire must be filed within 3 judicial days of payment. Failure of a party to file proof of written jury questionnaire payment within three judicial days of written notice of the court approving the written jury questionnaire or proof of payment for each written jury questionnaire to be completed by a potential juror within three judicial days of payment constitutes a waiver by the party of use of a jury questionnaire. All payments made pursuant to this section shall be non-refundable, even if a demand for trial by jury is withdrawn or the matter resolves prior to the commencement of trial. The Nevada Law Foundation shall disburse these funds to the Nevada legal service providers providing legally related services to the poor, to victims of domestic violence, and to children protected by or in need of protection of the juvenile court, as specified in Supreme Court Rule 216. Among the factors to be considered in

UNDER  
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disbursing these funds shall be the geographic origin of the funds. A demand for trial by jury made as herein provided may be withdrawn only with the consent of the parties, or for good cause shown upon such terms and conditions as the court may fix.



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## CURRENT RULE

### RULE 38. Jury trial of right

(a) Right preserved. The right of trial by jury as declared by the Constitution of the State or as given by a statute of the State shall be preserved to the parties inviolate.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving as required by Rule 5(b) upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than the time of the entry of the order first setting the case for trial.

(c) Same: Specification of issues. In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver; deposit of jurors' fees. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) and to deposit the fees required by this rule constitutes a waiver by the party of trial by jury. At the time a demand is filed as required by Rule 5(d), the party demanding the trial by jury shall deposit with the clerk an amount of money equal to the fees to be paid the trial jurors for their services for the first day of the trial. A demand for trial by jury made as herein provided may be withdrawn only with the consent of the parties, or for good cause shown upon such terms and conditions as the court may fix.

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**FEES FOR DEMAND FOR JURY TRIAL**

**CIVIL CASES FILED**

Fiscal Years 2007-2008

*PROJECTION = 50%*

COUNTY	FISCAL YEAR 2007 Civil Cases Filed Fee for Jury Demand	FISCAL YEAR 2008 Civil Cases Filed Fee for Jury Demand
Carson City	614 Cases Filed $x \$300/50\% =$ <b>\$92,100</b>	682 Cases Filed $x \$300/50\% =$ <b>\$102,300</b>
Churchill	167 Cases Filed $x \$300/50\% =$ <b>\$25,050</b>	167 Cases Filed $x \$300/50\% =$ <b>\$25,050</b>
Clark	24,252 Cases Filed $x \$300/50\% =$ <b>\$3,637,800</b>	27,091 Cases Filed $x \$300/50\% =$ <b>\$4,063,650</b>
Douglas	383 Cases Filed $x \$300/50\% =$ <b>\$57,450</b>	409 Cases Filed $x \$300/50\% =$ <b>\$61,350</b>
Elko	678 Cases Filed $x \$300/50\% =$ <b>\$101,700</b>	678 Cases Filed $x \$300/50\% =$ <b>\$101,700</b>
Esmeralda	10 Cases Filed $x \$300/50\% =$ <b>\$1500</b>	18 Cases Filed $x \$300/50\% =$ <b>\$2,700</b>
Eureka	11 Cases Filed $x \$300/50\% =$ <b>\$1650</b>	15 Cases Filed $x \$300/50\% =$ <b>\$2,250</b>
Humboldt	106 Cases Filed $x \$300/50\% =$ <b>\$15,900</b>	102 Cases Filed $x \$300/50\% =$ <b>\$15,300</b>
Lander	44 Cases Filed $x \$300/50\% =$ <b>\$6,600</b>	48 Cases Filed $x \$300/50\% =$ <b>\$7,200</b>
Lincoln	31 Cases Filed $x \$300/50\% =$ <b>\$4,650</b>	36 Cases Filed $x \$300/50\% =$ <b>\$5,400</b>
Lyon	262 Cases Filed $x \$300/50\% =$ <b>\$39,300</b>	353 Cases Filed $x \$300/50\% =$ <b>\$52,950</b>
Mineral	31 Cases Filed $x \$300/50\% =$ <b>\$4,650</b>	26 Cases Filed $x \$300/50\% =$ <b>\$3,900</b>

**FEEES FOR DEMAND FOR JURY TRIAL**

**CIVIL CASES FILED**

Fiscal Years 2007-2008

*PROJECTION = 50%*

Nye	387 Cases Filed $x \$300/50\% =$ <b>\$58,050</b>	280 Cases Filed $x \$300/50\% =$ <b>\$42,000</b>
Pershing	67 $x \$300/50\% =$ <b>\$10,050</b>	116 $x \$300/50\% =$ <b>\$17,400</b>
Storey	22 Cases Filed $x \$300/50\% =$ <b>\$3,300</b>	36 Cases Filed $x \$300/50\% =$ <b>\$5,400</b>
Washoe	4,104 Cases Filed $x \$300/50\% =$ <b>\$615,600</b>	4,219 Cases Filed $x \$300/50\% =$ <b>\$632,850</b>
White Pine	151 $x \$300/50\% =$ <b>\$22,650</b>	128 $x \$300/50\% =$ <b>\$19,200</b>
TOTALS	<b>\$4,698,000</b> (2007)	<b>\$5,160,600</b> (2008)

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**FEES FOR DEMAND FOR JURY TRIAL**

**CIVIL CASES FILED**

Fiscal Years 2007-2008

*PROJECTION = 60 %*

COUNTY	FISCAL YEAR 2007 Civil Cases Filed Fee for Jury Demand	FISCAL YEAR 2008 Civil Cases Filed Fee for Jury Demand
Carson City	614 Cases Filed $x \$300/60\% =$ <b>\$110,520</b>	682 Cases Filed $x \$300/60\% =$ <b>\$122,760</b>
Churchill	167 Cases Filed $x \$300/60\% =$ <b>\$30,060</b>	167 Cases Filed $x \$300/60\% =$ <b>\$30,060</b>
Clark	24,252 Cases Filed $x \$300/60\% =$ <b>\$4,365,360</b>	27,091 Cases Filed $x \$300/60\% =$ <b>\$4,876,380</b>
Douglas	383 Cases Filed $x \$300/60\% =$ <b>\$68,940</b>	409 Cases Filed $x \$300/60\% =$ <b>\$73,620</b>
Elko	678 Cases Filed $x \$300/60\% =$ <b>\$122,040</b>	678 Cases Filed $x \$300/60\% =$ <b>\$122,040</b>
Esmeralda	10 Cases Filed $x \$300/60\% =$ <b>\$1,800</b>	18 Cases Filed $x \$300/60\% =$ <b>\$3,240</b>
Eureka	11 Cases Filed $x \$300/60\% =$ <b>\$1,980</b>	15 Cases Filed $x \$300/60\% =$ <b>\$2,700</b>
Humboldt	106 Cases Filed $x \$300/60\% =$ <b>\$19,080</b>	102 Cases Filed $x \$300/60\% =$ <b>\$18,360</b>
Lander	44 Cases Filed $x \$300/60\% =$ <b>\$7,920</b>	48 Cases Filed $x \$300/60\% =$ <b>\$8,640</b>

**FEEES FOR DEMAND FOR JURY TRIAL**

**CIVIL CASES FILED**

Fiscal Years 2007-2008

*PROJECTION = 60 %*

Lincoln	31 Cases Filed $x \$300/60\% =$ <b>\$5,580</b>	36 Cases Filed $x \$300/60\% =$ <b>\$6,480</b>
Lyon	262 Cases Filed $x \$300/60\% =$ <b>\$47,160</b>	353 Cases Filed $x \$300/60\% =$ <b>\$63,540</b>
Mineral	31 Cases Filed $x \$300/60\% =$ <b>\$5,580</b>	26 Cases Filed $x \$300/60\% =$ <b>\$4,680</b>
Nye	387 Cases Filed $x \$300/60\% =$ <b>\$69,660</b>	280 Cases Filed $x \$300/60\% =$ <b>\$50,400</b>
Pershing	67 Cases Filed $x \$300/60\% =$ <b>\$12,060</b>	116 Cases Filed $x \$300/60\% =$ <b>\$20,880</b>
Storey	22 Cases Filed $x \$300/60\% =$ <b>\$3,960</b>	36 Cases Filed $x \$300/60\% =$ <b>\$6,480</b>
Washoe	4,104 Cases Filed $x \$300/60\% =$ <b>\$738,720</b>	4,219 Cases Filed $x \$300/60\% =$ <b>\$759,420</b>
White Pine	151 Cases Filed $x \$300/60\% =$ <b>\$27,180</b>	128 Cases Filed $x \$300/60\% =$ <b>\$23,040</b>
TOTALS	<b>\$5,637,600</b> (2007)	<b>\$6,192,720</b> (2008)



“5”

**FEEES FOR DEMAND FOR JURY TRIAL**

**CIVIL CASES FILED**

Fiscal Years 2007-2008

*PROJECTION = 70%*

<b>COUNTY</b>	<b>FISCAL YEAR 2007 Civil Cases Filed Fee for Jury Demand</b>	<b>FISCAL YEAR 2008 Civil Cases Filed Fee for Jury Demand</b>
Carson City	614 Cases Filed $x \$300/70\%=$ <b>\$128,940</b>	682 Cases Filed $x \$300/70\%=$ <b>\$143,220</b>
Churchill	167 Cases Filed $x \$300/70\%=$ <b>\$35,070</b>	167 Cases Filed $x \$300/70\%=$ <b>\$35,070</b>
Clark	24,252 Cases Filed $x \$300/70\%=$ <b>\$5,092,920</b>	27,091 Cases Filed $x \$300/70\%=$ <b>\$5,689,110</b>
Douglas	383 Cases Filed $x \$300/70\%=$ <b>\$80,430</b>	409 Cases Filed $x \$300/70\%=$ <b>\$85,890</b>
Elko	678 Cases Filed $x \$300/70\%=$ <b>\$142,380</b>	678 Cases Filed $x \$300/70\%=$ <b>\$142,380</b>
Esmeralda	10 Cases Filed $x \$300/70\%=$ <b>\$2,100</b>	18 Cases Filed $x \$300/70\%=$ <b>\$3,780</b>
Eureka	11 Cases Filed $x \$300/70\%=$ <b>\$2,310</b>	15 Cases Filed $x \$300/70\%=$ <b>\$3,150</b>
Humboldt	106 Cases Filed $x \$300/70\%=$ <b>\$22,260</b>	102 Cases Filed $x \$300/70\%=$ <b>\$21,420</b>

**FEES FOR DEMAND FOR JURY TRIAL**

**CIVIL CASES FILED**

Fiscal Years 2007-2008

*PROJECTION = 70%*

Lander	44 Cases Filed $x \$300/70\%=$ <b>\$9,240</b>	48 Cases Filed $x \$300/70\%=$ <b>\$10,080</b>
Lincoln	31 Cases Filed $x \$300/70\%=$ <b>\$6,510</b>	36 Cases Filed $x \$300/70\%=$ <b>\$7,560</b>
Lyon	262 Cases Filed $x \$300/70\%=$ <b>\$55,020</b>	353 Cases Filed $x \$300/70\%=$ <b>\$74,130</b>
Mineral	31 Cases Filed $x \$300/70\%=$ <b>\$6,510</b>	26 Cases Filed $x \$300/70\%=$ <b>\$5,460</b>
Nye	387 Cases Filed $x \$300/70\%=$ <b>\$81,270</b>	280 Cases Filed $x \$300/70\%=$ <b>\$58,800</b>
Pershing	67 Cases Filed $x \$300/70\%=$ <b>\$14,070</b>	116 Cases Filed $x \$300/70\%=$ <b>\$24,360</b>
Storey	22 Cases Filed $x \$300/70\%=$ <b>\$4,620</b>	36 Cases Filed $x \$300/70\%=$ <b>\$7,560</b>
White Pine	151 Cases Filed $x \$300/70\%=$ <b>\$31,710</b>	128 Cases Filed $x \$300/70\%=$ <b>\$26,880</b>
TOTALS	<b>\$6,577,200</b> (2007)	<b>\$7,224,840</b> (2008)

“6”

**FEES FOR DEMAND FOR JURY TRIAL**

**CIVIL CASES FILED**

Fiscal Years 2007-2008

*PROJECTION = 80%*

COUNTY	FISCAL YEAR 2007 Civil Cases Filed Fee for Jury Demand	FISCAL YEAR 2008 Civil Cases Filed Fee for Jury Demand
Carson City	614 Cases Filed $x 300/80\% =$ \$147,360	682 Cases Filed $x 300/80\% =$ \$163,680
Churchill	167 Cases Filed $x 300/80\% =$ \$40,080	167 Cases Filed $x 300/80\% =$ \$40,080
Clark	24,252 Cases Filed $x 300/80\% =$ \$5,820,480	27,091 Cases Filed $x 300/80\% =$ \$6,501,840
Douglas	383 Cases Filed $x 300/80\% =$ \$91,920	409 Cases Filed $x 300/80\% =$ \$98,160
Elko	678 Cases Filed $x 300/80\% =$ \$162,720	678 Cases Filed $x 300/80\% =$ \$162,720
Esmeralda	10 Cases Filed $x 300/80\% =$ \$2,400	18 Cases Filed $x 300/80\% =$ \$4,320
Eureka	11 Cases Filed $x 300/80\% =$ \$2,640	15 Cases Filed $x 300/80\% =$ \$3,600
Humboldt	106 Cases Filed $x 300/80\% =$ \$25,440	102 Cases Filed $x 300/80\% =$ \$24,480

**FEES FOR DEMAND FOR JURY TRIAL**

**CIVIL CASES FILED**

Fiscal Years 2007-2008

*PROJECTION = 80%*

Lander	44 Cases Filed $x 300/80\%=$ <b>\$10,560</b>	48 Cases Filed $x 300/80\%=$ <b>\$11,520</b>
Lincoln	31 Cases Filed $x 300/80\%=$ <b>\$7,440</b>	36 Cases Filed $x 300/80\%=$ <b>\$8,640</b>
Lyon	262 Cases Filed $x 300/80\%=$ <b>\$62,880</b>	353 Cases Filed $x 300/80\%=$ <b>\$84,720</b>
Mineral	31 Cases Filed $x 300/80\%=$ <b>\$7,440</b>	26 Cases Filed $x 300/80\%=$ <b>\$6,240</b>
Nye	387 Cases Filed $x 300/80\%=$ <b>\$92,880</b>	280 Cases Filed $x 300/80\%=$ <b>\$67,200</b>
Pershing	67 Cases Filed $x 300/80\%=$ <b>\$16,080</b>	116 Cases Filed $x 300/80\%=$ <b>\$27,840</b>
Storey	22 Cases Filed $x 300/80\%=$ <b>\$5,280</b>	36 Cases Filed $x 300/80\%=$ <b>\$8,640</b>
Washoe	4,104 Cases Filed $x 300/80\%=$ <b>\$984,960</b>	4,219 Cases Filed $x 300/80\%=$ <b>\$1,012,560</b>
White Pine	151 Cases Filed $x 300/80\%=$ <b>\$36,240</b>	128 Cases Filed $x 300/80\%=$ <b>\$30,720</b>
TOTALS	<b>\$7,516,800</b> (2007)	<b>\$8,256,960</b> (2008)

**TAB 5**

000102



## MEMORANDUM

From: Kristina Marzec, Director  
To: Access to Justice Commission  
Date: July 10, 2009  
Re: IOLTA/ Preferred Interest Benchmarks



**Attachments:** My previous IOLTA comparability research and recap memorandums

There are two questions related to the Preferred Interest program which require Commission attention and potential action:

- 1) Preferred Interest List Policy under the existing voluntary program; and
- 2) The potential filing of an ADKT under NRAD 3.2 by either the Commission, the State Bar, or a judge to codify #1 above in future and make the minimum standards mandatory.

### Voluntary Program

The first issue can, and respectfully needs to be, clarified at today's Commission meeting. I would suggest the Commission:

#### 1. Approve through December 2009 the following benchmarks for a bank's voluntary inclusion on the Preferred Interest List:

1. .50 basis points of the 30-Day LIBOR, or 1%, whichever is greater;
2. Equal to the Fed Fund Rate, or 1%, whichever is greater;
3. A flat 2% for one year.

Each of these requires a written agreement including that there will be no minimum balances nor any negative netting or other fees.

2. Invest authority in the Nevada Law Foundation and/or a Commission Representative (such as Paul Elcano) to approve any banks which agree to any one of the voluntary benchmarks through 2009.
3. Clarify whether to retain on the list 2% banks that need to drop to less than 2% but more than 1% due to economic concerns.

### Potential Rule Change

Each of the Commission's subcommittees, and the Commission itself, has in the past supported the idea of codifying the voluntary program in principle. Based on my research, input from each of the subcommittees, input from the Nevada Law Foundation, and input from some of the Preferred Interest Banks, I would recommend if there is an appetite for such a rule, the following proposed rule change language is an appropriate starting point for discussions:



**Rule 217. Creation and maintenance of interest-bearing trust accounts.** A member of the state bar or the member's law firm shall create or maintain an interest-bearing trust account for clients' funds which are nominal in amount or to be held for a short period of time in any banking or savings and loan association which is in compliance with the following provisions:

1. An interest-bearing trust account established pursuant to this rule may be established with any bank or savings and loan association authorized by federal or state law to do business in Nevada and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or other financial institution approved by the state bar pursuant to Rule 78.5 of these rules. Funds in each interest-bearing account shall be subject to withdrawal upon request and without delay.

2. The rate of interest payable upon any interest-bearing trust account shall ~~not be less than the rate paid by the depository institution to regular non-attorney depositors.~~ equal to or greater than any one of the following :

(a) .50 basis points off the 30-day LIBOR or 1%, whichever is greater;

(b) Equal to the Fed Fund Target Rate or 1%, whichever is greater;

(c) Equal to a flat interest rate, to be set each year by the Access to Justice Commission (or Nevada Law Foundation) and approved by the Supreme Court on or before November 1 for the following fiscal year.

Exceptions: Lack of a participating institution under this rule within 20 miles of the lawyer or law firm's primary business address shall be grounds for exemption under the above subsection.

Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit, may be obtained by a member of the state bar or the member's law firm on some or all deposited funds so long as there is no impairment of the right to withdraw or transfer principal immediately.

3. A member of the state bar or the member's law firm establishing such account shall direct the depository institution:

(a) To remit interest or dividends, as the case may be, on the average monthly balance in the account or as otherwise computed in accordance with an institution's standard accounting practice at least quarterly, to the Nevada Law Foundation, the designated tax-exempt bar foundation;

(b) To transmit with each remittance to the Nevada Law Foundation a statement showing the name of the member of the state bar or the member's law firm for whom the remittance is sent (and the rate of interest applied); and

(c) To transmit to the depositing member of the state bar or the member's law firm at the same time a report showing the amount paid to the Nevada Law Foundation.





**MEMORANDUM**

From: Kristina Marzec, Director  
To: Kimberly Farmer, Executive Director  
Date: May 8, 2009  
Re: IOLTA benchmarking summary



**Current Rule: 217(2)**

*"The rate of interest payable upon any interest-bearing trust account shall not be less than the rate paid by the depository institution to regular nonattorney depositors."*

**Elements of proposed rule establishing *minimum benchmark ranges* as discussed to date:**

- Rate of interest shall be equal to or greater than one of the following:
  1. .50 basis points of the 30-Day LIBOR or 1%, whichever is greater; or
  2. Equal to the Fed Fund Rate or 1%, whichever is greater; or
  3. A flat 2% for one year.
- Minimum balance requirements and negative netting fees would be prohibited.
- Waiver for rural areas without a participating bank within a reasonable distance.
- Rates to be reviewed and adjusted annually (between Oct and Dec) by Access to Justice and Nevada Law Foundation
- Grace period from effective date of inaugural rule to give banks time to adjust

**States with "comparability":**

Alabama	Massachusetts	Ohio
Arizona	Maine	Texas
California	Michigan	
Connecticut	Minnesota	West Virginia pending
Florida	Missouri	
Illinois	New Jersey	
Louisiana	New Mexico	
Maryland	New York	

**Which rule is utilized in other states to effect "comparability"?**

Interestingly, RPC 1.15 is the highly favored rule of choice for comparability because it reinforces the message that this rule regulates lawyers, not banks.

1. One (1), Massachusetts, governs IOLTA through IOLTA **Committee Guidelines**;
2. One (1), Texas, has rules of court specific to its **Access to Justice Foundation**, which govern IOLTA;
3. Two (2), California and Florida, have **legislation** that interlocks with the court rules;
4. One (1), Maryland, governs IOLTA through its **version of Nevada Rule 78.5** (Maryland Bar Rule 16-610); and
5. The remaining large majority of thirteen (13) have **amended Rule of Professional Conduct 1.15 (Safekeeping Property)** with fairly elaborate rules;

### What are the rule options for Nevada for codifying IOLTA rate minimum standards benchmarks:

- 1) Amend SCR 217 to simply replace the current language with "The rate of interest payable ... shall be equivalent to one of the following..." and insert the benchmarks, also incorporating a yearly review by either the Nevada Law Foundation, the Access to Justice Commission, the State Bar Board of Governors, or some combination thereof;
- 2) Amend RPC 1.15 , which would also allow for additional language on such issues as spot auditing for compliance with SCR 217;
- 3) Amend SCR 78.5 to marry comparability with approved financial institutions, which is highly disfavored across the board from my discussions; or
- 4) Create an entirely new rule.

### Why are non-comparability states doing better, in some cases, than comparability states in this economy?

Most important to this discussion is the Nevada proposal is not comparability. It is a new variable model that takes its lessons from the pitfalls of traditional comparability in a volatile economy.

Traditional comparability is equal to a percentage of the FFR, or Fed Fund Rate. The problem last year came when in order to stimulate the economy, the Fed dropped the FFR to a range of 0 to .25% (for the first time since the 1940s). This had the unintended effect of decimating IOLTA funds in states tied to that rate. Because the FFR is expected to stay very low for some time, in response several comparability states have initiated rule changes to adopt floors. The Nevada Access to Justice Commission is promoting a new standard of minimum benchmarks with a range of options, to give banks maximum flexibility in offering lawyer trust fund services.

### Who monitors rule compliance?

This is universally considered a core function of IOLTA foundations

### IOLTA litigation

There is currently no pending IOLTA litigation since *Brown v. Legal Foundation of Washington*, 538 U.S. 216, 123 S.Ct. 1406 (2003). On March 26, 2003, the U.S. Supreme Court issued its decision in *Brown v. Legal Foundation of Washington* 538 U.S. \_\_\_ (2003), upholding the constitutionality of IOLTA under the Just Compensation Clause of the Fifth Amendment. In its ruling, the Court held that even assuming that a law requiring that the interest generated on IOLTA accounts be transferred to a different owner amounted to a per se taking, such a taking was for a valid public use and the amount of just compensation due was zero. As a result, the Court found that the operation of the IOLTA program in Washington does not violate the Fifth Amendment.

The Court's analysis began by establishing that the text of the Fifth Amendment "confirms the state's authority to confiscate private property", so long as two conditions are met: "the taking must be for a 'public use' and 'just compensation' must be paid to the owner." The Court disposed of the "public use" question by stating that "... the overall, dramatic success of these programs in serving the compelling interest in providing legal services to literally millions of needy Americans certainly qualifies the Foundation's distribution of these funds as a 'public use' within the meaning of the Fifth Amendment."

As to the alleged taking of interest, the Court indicated that the per se analysis was appropriate to the facts of this case and consistent with its previous holding in *Phillips v. Washington Legal Foundation* that the interest is the property of the clients. The majority assumed that the petitioners' "interest was taken for a public use when it was ultimately turned over to the Foundation." This assumption, however, did not end the Court's inquiry. The Court held that, in any event, there was no constitutional violation because no just compensation was due. In essence, the Court found that the plaintiffs in the case lost nothing of value given the fact that transaction costs would have outweighed the small amount of gross interest their individual accounts would have earned. In reaching its conclusion, the Court applied a long line of Fifth Amendment cases on just compensation, stating: "[J]ust compensation required by the Fifth Amendment is measured by the property owner's loss rather than the government's gain."



## MEMORANDUM

From: Kristina Marzec, Director  
To: Access to Justice Commission  
Date: February 3, 2009  
Re: IOLTA COMPARABILITY RESEARCH



*This memorandum was prepared with assistance from Suzan Baucum of the Nevada Law Foundation.*

### **Brief Issue:**

Chief Justice Hardesty requested that the Commission and the Board of Governors consider effecting IOLTA comparability through amendment to one or more Nevada Supreme Court Rules.

### **Research Background:**

In preparing this response, I spoke with a representative from half of the 18 states which have adopted substantive comparability<sup>a</sup> and the ABA, and also reviewed each comparability rule text (attached hereto). Suzan Baucum provided substantial input from the national IOLTA community, and the local banking community.

The critical common elements in the process in each state involved:

1. Negotiations and backing by the state banking association(s);
2. Backing by the relevant State Bar Committee if applicable, and governing board;
3. A mechanism by which banks were given significant time to achieve the targeted comparability prior to effective date of the rule or legislation;
4. A benchmark with **carefully crafted language** and **review of current banking rates** to insure that banks were being asked to provide an identifiable rate closely tied to similarly situated non-IOLTA accounts (this was key in avoiding threatened litigation); and
5. A built-in review system to allow fluidity of the market, either through the rate itself or regulatory oversight (usually the local IOLTA Foundation).

### **Relevant Potential Rules discussion:**

There are two rules in Nevada that apply to trust accounts we have been discussing for potential amendment: SCR 78.5 (establishing approved financial institutions, a State Bar function, which is typical of national standards) and SCR 217 (creation and maintenance of trust accounts).

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<sup>a</sup> AL\*, AR, CA, CT\*, FL\*, IL, LA, MD, MA, ME, MI\*, MN, MS, MO, NJ\*, NY, OH\*, TX. (\*rule more than one year old)

In reviewing and discussing what others states have done, we see **RPC 1.15 is the highly favored rule of choice for comparability because it reinforces the message that this rule regulates lawyers, not banks.**

1. One (1), Massachusetts, governs IOLTA through **IOLTA Committee Guidelines**;
2. One (1), Texas, has rules of court specific to its **Access to Justice Foundation**, which govern IOLTA;
3. Two (2), California and Florida, have **legislation** that interlocks with the court rules;
4. One (1), Maryland, governs IOLTA through its **version of Nevada Rule 78.5** (Maryland Bar Rule 16-610); and
5. The remaining large majority of thirteen (13) have **amended Rule of Professional Conduct 1.15 (Safekeeping Property)** with fairly elaborate rules;

All states have had an older, generic comparability rule similar to that currently in NSCR 217(2) which states, in relevant part,

*“The rate of interest payable upon any interest-bearing trust account shall not be less than the rate paid by the depository institution to regular nonattorney depositors.”*

As we have seen here and around the country, this general language is ineffective and unenforceable language.

Many comparability states establish the benchmark, and then add an honor roll program to encourage and promote those banks that go above and beyond. Maryland’s “Banking on Justice” IOLTA honor roll program serves as an excellent model for a similar program, whose preferred banks receive benefits to include:

*Highlighted on MSBA & MLSC websites; Active link from MLSC website to Honor Roll member website; Prominently featured in Maryland’s premier legal newspaper, The Daily Record; Promoted at all MLSC events; Promoted and prominently featured at MSBA events, including MSBA Annual Meeting; Featured at various local & specialty bar meetings; Broad publication of Honor Roll members in local & statewide bar publications & newsletters; Promoted at semi-annual MSBA Professionalism Course, a mandatory program attended by every newly-admitted Maryland attorney.*

- **Options in Summary:**

- 1) Amend RPC 1.15 to establish a definition of comparability, which would also allow for additional language on such issues as spot auditing for compliance with SCR 217;
- 2) Amend SCR 217 to simply replace the current language with “The rate of interest payable ... shall be equivalent to one of the following...” and insert the benchmarks, also incorporating a yearly review by either the Nevada Law Foundation, the Access to Justice Commission, the State Bar Board of Governors, or some combination thereof;
- 3) Amend SCR 78.5 to marry comparability with approved financial institutions, which is highly disfavored across the board from my discussions; or
- 4) Create an entirely new rule.

## **Comparability Generally:**

In the event other options to regulating comparability directly are desired, the ABA identifies four (4) generally accepted options to achieving comparability by rule:

1. Create an investment product, such as repurchase agreements (REPOS) or a Government Money Market Fund, where the banks can make a profit on IOLTA funds through those vehicles. .
2. Give financial institutions the option to pay the higher interest rate that would be available under a REPO or Government Money Market Fund on an existing account ("emulate" the comparable rate).
3. Benchmarking. Approximate what the rate (net of reasonable services charges and fees) would be on average in this market, represented as a percentage of the federal funds target rate). The average benchmark rate found in comparability rules nationally is about 60% of the federal funds target rate.
4. Negotiated rate. Not rule based. Focus on equitable treatment approach through negotiations (treat like other similarly-situated non-IOLTA accounts). Pair with a recognition program for banks which voluntarily exceed the compliance level.

## **Compliance monitoring:**

However comparability is established, but in particular with regulated benchmarks, it is critical that one entity or person (almost universally the IOLTA foundation) monitor the market and compliance of both banks and lawyers.

## **Benchmarks:**

The three benchmarks previously approved by the Commission are *a minimum of:*

1. .50 basis points of the 30-Day LIBOR;
2. Equal to the Fed Fund Rate (which was 2% at the time but is now at or near zero);
3. A flat 2% for one year.

Each of these requires a written agreement with no negative netting or other fees.

The Commission has temporarily halted the Fed Fund Rate for its Preferred List because it is now so low; this is the rate that the rest of the country is tied to, and it is causing a major crisis for legal services nationally.

- **Floor and ceiling:** A unique solution that we have been discussing for Nevada would be to keep the above three benchmark options, but for the two tied to an index, add language that established the higher of the index or "no lower than 1%" or "no lower than .50 basis points above the Fed Discount Rate." This will keep true comparability from the banking perspective and allow for fluctuations in the market during the year.
- **Verifying what banks are really paying nonattorney depositors.**

There is a research company called "Informa Research Services" which the national community uses to monitor banking rates for any number of reasons. The IOLTA community

uses them almost exclusively as they are experienced and very knowledgeable of the needs and concerns of the IOLTA community and the banks which fund them. I contacted Inform and got a rate quote from the Nevada representative for deposit reports in Nevada: \$100 per institution for a one time report and \$235 per institution for a monthly report. Given that 70% of our deposits are in three banks, it seems reasonable that such a report be considered for those three banks if we expect to be in negotiations over the issue of what rates are reasonable and comparable, and when adjusting rates.

## Legislation

The ABA reports that there is currently no pending IOLTA litigation since *Brown v. Legal Foundation of Washington*, 538 U.S. 216, 123 S.Ct. 1406 (2003).

On March 26, 2003, the U.S. Supreme Court issued its decision in *Brown v. Legal Foundation of Washington* 538 U.S. \_\_\_ (2003), upholding the constitutionality of IOLTA under the Just Compensation Clause of the Fifth Amendment. Justice Stevens authored the 5-4 majority decision, which Justices O'Connor, Souter, Ginsburg and Breyer joined. In its ruling, the Court held that even assuming that a law requiring that the interest generated on IOLTA accounts be transferred to a different owner amounted to a per se taking, such a taking was for a valid public use and the amount of just compensation due was zero. As a result, the Court found that the operation of the IOLTA program in Washington does not violate the Fifth Amendment.

- **Analysis of *Brown* Decision (presented by the ABA IOLTA Committee)**

The Court's analysis began by establishing that the text of the Fifth Amendment "confirms the state's authority to confiscate private property", so long as two conditions are met: "the taking must be for a 'public use' and 'just compensation' must be paid to the owner." The Court disposed of the "public use" question by stating that "... the overall, dramatic success of these programs in serving the compelling interest in providing legal services to literally millions of needy Americans certainly qualifies the Foundation's distribution of these funds as a 'public use' within the meaning of the Fifth Amendment."

The Court then discussed the type of taking, if any, involved in the case. The petitioners alleged two takings claims based on (1) the requirement that certain types of client funds be placed in an IOLTA account and (2) the transfer of interest from an IOLTA account to the Washington IOLTA program. Applying a regulatory taking analysis, the Court concluded that the placement of funds in an IOLTA account was not a taking "because the transaction had no adverse economic impact on petitioners and did not interfere with any investment-backed expectations." As to the alleged taking of interest, the Court indicated that the per se analysis was appropriate to the facts of this case and consistent with its previous holding in *Phillips v. Washington Legal Foundation* that the interest is the property of the clients. The majority assumed that the petitioners' "interest was taken for a public use when it was ultimately turned over to the Foundation." This assumption, however, did not end the Court's inquiry.

The Court held that, in any event, there was no constitutional violation because no just compensation was due. In essence, the Court found that the plaintiffs in the case lost nothing of value given the fact that transaction costs would have outweighed the small amount of gross interest their individual accounts would have earned. In reaching its conclusion, the Court applied a long line of Fifth Amendment cases on just compensation, stating: "[J]ust compensation required by the Fifth Amendment is measured by the property owner's loss rather than the government's gain."



Finally, the Court addressed the plaintiffs' argument that funds could have mistakenly been deposited in an IOLTA account when the interest generated would actually have exceeded the transaction costs involved, contrary to the law establishing the IOLTA program in Washington State. While recognizing that mistakes might occur, the Court pointed out that the responsibility of ensuring that only qualifying funds are deposited in IOLTA accounts rests with the entity making the deposits (in this case the Limited Practice Officers handling real estate escrows). While the property owner might have a claim against the entity making a faulty deposit, that faulty deposit would not involve any state action subject to Fifth Amendment protection.

- **The Dissents**

Justice Scalia authored a spirited dissent, which was joined by Chief Justice Rehnquist and Justices Kennedy and Thomas. In it, IOLTA was likened to a "Robin Hood Taking, in which the government's extraction of wealth from those who own it is so cleverly achieved, and the object of the government's larcenous beneficence is so highly favored by the courts (taking from the rich to give to indigent defendants) that the normal rules of the Constitution protecting private property are suspended." Justice Scalia argued that the fair market value of the interest earned by the clients' principal should be the test of just compensation, rather than the net interest approach used by the majority.

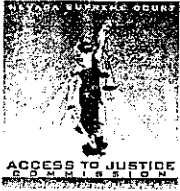
Justice Kennedy also issued a brief additional dissent in which he raised First Amendment concerns regarding IOLTA. Kennedy wrote: "The First Amendment consequences of the State's action have not been addressed in this case, but the potential for a serious violation is there. . . One constitutional violation (the taking of property) likely will lead to another (compelled speech)."

## **Conclusion**

The cleanest method to establish comparability by rule appears to be amending RPC 1.15, ensuring the benchmarks are worded with viable alternatives for banks which reasonably reflect the market, and establishing an annual review process to ensure that the benchmarks remain viable. For rates tied to an index, a floor should be established to avoid a future crisis such as the one affecting the rest of the country tied to the Fed Target Rate.

Understanding the urgency Nevada faces, it nonetheless appears advisable to work with the Nevada Bankers Association at the front end for support of what by all accounts appears to be a very reasonably crafted proposal, avoiding misconceptions about the actual proposal and push back later when the proposal is opened for public comment.





## MEMORANDUM

From: Anna Johnson, Lynn Etkins, and Kristina Marzec

To: Access to Justice Commission

Re: Commission Composition under SCR 15: Review and recommendations

### **Attachments:**

- 1- Redline recommended amendments
- 2- Roster by rule-slotted allocations
- 3- Current subcommittees

Justice Douglas tasked this working group to compare the current composition of the Access to Justice Commission with enabling Rule 15 and make recommendations on potential changes and attendant policy considerations. To that end, what follows are recommendations which (a) identify housekeeping changes in the rule to conform to current organizational relationships, (b) recommend new Commission appointments, (c) identify current appointments requiring attention under the existing language, and (d) recommend policy regarding standing committees and working groups.

### **1. Rule Changes**

As seen in the attached redline, housekeeping changes are recommended to include changing the name of Clark County Legal Services to Legal Aid Center of Southern Nevada, removing the two now-defunct pro bono foundations, and codifying the Commission executive director position.

Additions recommended as formal appointments are: The Nevada Law Foundation, a PILA student representative, and a State Bar of Nevada Young Lawyers Section Representative.

### **2. Appointments**

**Terms.** Subject to reappointment under the current rule in 2010 (four year terms).

**Defunct slots.** There are two now-defunct slots for the prior pro bono foundations which need to be addressed. One was vacated by Judge Voy and the second remains filled by Judge Steinheimer.

**Vacancies.** There are three immediate vacancies: A limited jurisdiction judge under §2(c); a Clark County Bar representative under §2(f); and a second lay-member under §2(h). As indicated above, three new formal appointments are recommended for the Nevada Law Foundation in §2(e); a PILA student representative in §2(g); and a State Bar of Nevada Young Lawyers Section Representative in §2(f).

### **3. Policy Considerations**

These recommendations replace two defunct positions and add one additional slot. This group posits that formally appointing non-Commission members to the committees and working groups and formally recognizing their volunteerism is the best practice to achieve the Commissions goals rather than significantly expanding the size of the voting Commission. As it stands, there exists a liberal policy of non-voting member attendance at Commission meetings as allowed under the current rule, which is a practice that serves the purpose of ensuring that needed points of view are at the table. This also allows flexibility as the Commission works through various goals and projects that may affect various interested groups at differing junctures.

## 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, the commission executive director, 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]~~ Legal Aid Center of Southern Nevada/ Pro Bono Project, ~~[the Eighth Judicial District Pro Bono Foundation]~~ the Nevada Law 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 Board of Governors, the State Bar of Nevada Young Lawyers Section, and the Washoe County Bar Association.
- (g) One student representative designated by the Public Interest Law Association, and, [Ø]one faculty 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.

**Access to Justice Commission**  
2009

Last	First	Title	Position	Rule Slot	SCR 15§	Email
Abbott	Kimberly		Pro Bono Project Director	Legal Aid Center of Southern Nevada	2(e)	kabbott@lacsfn.org
Cooney	Valerie		Executive Director	Volunteer Attorneys for Rural Nevadans	2(e)	vcooney@vairn.org
Desmond	John			Washoe County Bar	2(f)	jpd@jonesvargas.com
Doherty	Frances	Hon.		Second Judicial District Court/ Family Court	2(a)	frances.doherty@washoeccourts.us
Douglas	Michael	Justice	Commission Co-Chair	Supreme Court of Nevada	2	mdouglas@nvccourts.nv.gov
Elcano	Paul		Executive Director	Washoe Legal Services	2(e)	pelcano@ashoelegalservices.org
Ferenbach	Cam			SBN Board of Governors	2(f)	cferenbach@jlonelsawyer.com
Goff						
Gonzalez	Betsy	Hon.		Eighth Judicial District Court	2(a)	GonzalezB@clarkcountycourts.us
Hardesty	James	Chief Justice	Commission Co-Chair	Supreme Court of Nevada	2	jhardesty@nvccourts.nv.gov
Johnson	Anna Marie		Executive Director	Nevada Legal Services	2(e)	ajohnson@nlsilaw.net
Kandt	W. Brett			Office of the Attorney General	2(d)	bkandi@ag.nv.gov
Nielsen	Ernest			Washoe Co. Senior Law Project	2(e)	enielsen@washoeccourt.nv.us
Puccinelli	Andrew	Hon.		Fourth Judicial District Court/Rural rep	2(b)	apuccinelli@elkocountynv.net
Thronson	David	Professor		UNLV Boyd Law School	2(g)	David.thronson@unlv.edu
Vogel	Sheri Cane		Executive Director	Senior Citizens Law Project	2(e)	svogel@lasvegasnevada.gov
Warden	Tom		Vice President, Community Relations The Howard Hughes Corporation	Layperson 1	2(h)	twarden@ggp.com
Steinheimer	Connie	Hon.		Defunct slot- Washoe Access to Justice Foundation	2(e)	judge.steinheimer@washoeccourt.us
Vacant				Defunct slot-Eight Judicial Pro Bono Foundation	2(e)	
Vacant				Clark County Bar	2(f)	
Vacant				Limited Jurisdiction Judge, Liaison to Nevada Judges Association 15(2)(c)	2(c)	
Vacant				Layperson 2	2(h)	
Marzec	Kristina		Commission Ex. Dir.	Staff	2	kristinam@nvbar.org

**NEVADA SUPREME COURT ACCESS TO JUSTICE**  
**STANDING COMMITTEES**  
Updated 4.2009

**RURAL SERVICES DELIVERY** *est. April 2009*

**Justice Douglas**  
**Amber Candelaria**  
**Valerie Cooney**  
Judge Dahl  
Judge Davis  
Judge Dory  
Judge Fletcher  
Anne Heck (AOC)  
**Anna Johnson**  
Judge Lane  
Judge Maslach  
John McCormick (AOC)  
Sheryl Overstreet (AOC)  
Judge Papez  
**Judge Puccinelli**  
Judge Wagner  
Judge Wambolt

**COMMUNICATIONS**

Needs Assessment Marketing  
Public Interest Lecture Series  
Recruitment and Retention  
    LRAP- Development  
    Fellowships- LSD  
    Benefits and Salaries- LSD  
Mandatory Reporting  
Website

**David Thronson**  
**Judge Gonzalez**  
**Kimberly Abbott**  
**Brett Kandt**  
**Judge Doherty**  
Christine Smith  
William Heavilin  
Trevor Hayes

**Scott Roedder- ex officio**

**DEVELOPMENT**

LRAP  
Division of Aging Funding concerns  
Court Posted Fees  
    Nye County  
Real Estate Escrow Funds  
Recruitment/Retention  
    2009 Fellowship- Thronson  
    LRAP- work group Lynn, Anna, Val, ask Judge Dahl)  
    Retirement/benefits/salaries- Paul  
Cy Pres-Paul

**Ernie Nielsen**

Paul Elcano  
Valerie Cooney  
Bret Kandt  
Nancy Becker  
Anna Johnson  
Cam Ferenbach  
Tom Warden  
Lynn Etkins  
Suzy Baucum  
David Thronson

### LEGAL SERVICES DELIVERY

**Working Groups:** Pro Bono Delivery; Awards and Pro Bono Week; Mandatory Reporting and 6.1

Pro Bono Recognition  
Pro Bono Week- also with Communications  
State Wide Award- Renee  
Nevada Lawyer  
Emeritus- Kimberly  
Self Help  
Standardized Forms-Justice Douglas, Chair, Supreme Court Library Commission  
Hotlines, continuum of care issues  
Standardized Reporting (provider statistics)  
Law Firm Initiatives

Paul Elcano (ED)  
Sugar Vogel (ED)  
John Desmond  
Kimberly Abbott  
Judge Steinheimer  
AnnaMarie Johnson (ED)  
Ernie Nielsen (ED)-Chair  
Valerie Cooney (ED)  
Judge Puccinelli  
Barbara Buckley (ED)  
Lynn Etkins  
Odessa Ramirez  
Renee Kelly  
Christopher Reade  
Amber Candelaria

### FUND DISTRIBUTION

TBD

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





**2008 Mandatory Pro Bono Results (As of 4/28/2009)**

Total Number of Forms still expected: 201

Total Number of Attorney Responses to Man Docs: 8211

4018 indicated 'I did not provide any pro bono service as described in RPC 6.1.'

2648 indicated 'I provided pro bono service as described in RPC 6.1.'

1509 did not answer this question, but returned a form.

1879 attorneys reported providing 72599.58 hours of service to low-income clients.

224 reported receiving cases through the Legal Aid Center of Southern Nevada

8 reported receiving cases through the Las Vegas Senior Law Project.

103 reported receiving cases through Nevada Legal Services.

27 reported receiving cases through Volunteer Attorneys for Rural Nevada

20 reported receiving cases through Washoe County Senior Law Projects

59 reported receiving cases through Washoe Legal Services

1479 reported assistance given to other sources.

31 reported giving \$16,427 to Clark County Legal Services/Pro Bono Project

6 reported giving \$2,800 to Las Vegas Senior Law Project

13 reported giving \$36,526 to Nevada Legal Services

102 reported giving \$45,875 to Nevada State Bar

40 reported giving \$18,500 to Volunteer Attorneys of Rural Nevada (VARN)

9 reported giving \$1,950 to Washoe County Senior Law Project

17 reported giving \$4,675 to Washoe Legal Services

803 reported 54653.8 hours at a reduced fee.

349 reported 15146.4 hours of legal services to organizations that address the needs of persons of limited means.

723 reported 26609.1 hours of service in activities improving the law or law related education.

**Attachment A**

**RPC 6.1 Pro Bono Publico Service  
2006-2008 Reporting Year Comparisons  
As of April 24, 2009**

	<b>As Indicated on Members' Reporting Forms (Active and Inactive)</b>		
	<b>2006 Report</b>	<b>2007 Report</b>	<b>2008 Report**</b>
Did you provide any pro bono?*	No - 4447 Yes - 2663	No - 4342 Yes - 2690	No - 4018 Yes - 2648
Hours of direct legal services for no fee to low income clients.	2191 lawyers 93,394 hours	2399 lawyers 91,917 hours	1879 lawyers 72,599 hours
Received cases through:			
Legal Aid Center of Southern Nevada	464 cases 47 donated \$24,122	497 cases 51 donated \$25,322	224 cases 31 donated \$16,427
Senior Law Project	10 cases 7 donated \$2,700	11 cases 6 donated \$2,600	8 cases 6 donated \$2,800
Nevada Legal Services	24 cases 12 donated \$4,680	25 cases 12 donated \$4,680	103 cases 13 donated \$29,526***
Volunteer Attorneys for Rural Nevada	29 cases 32 donated \$11,627	29 cases 33 donated \$12,127	27 cases 40 donated \$18,500
Washoe County Senior Law Project	18 cases 2 donated \$700	19 cases 2 donated \$700	20 cases 9 donated \$1,950
Washoe Legal Services	42 cases 18 donated \$5,670	43 cases 18 donated \$5,670	59 cases 17 donated \$4,675
Cases taken from other entities	1578	1691	1479
Dollars reported as donated:			
8 <sup>th</sup> Judicial Pro Bono Foundation	\$2,700 (by 7)	not applicable	not applicable
SBN Dues Check off (reported)****	\$52,560 (by 115)	\$55,060 (by 120)	\$45,875 (by 102)
8 <sup>th</sup> Judicial Court	n/a	\$2,950 (by 8)	not applicable
Washoe Access to Justice Foundation	\$150 (by 1)	\$350 (by 2)	not applicable
Provided direct legal services at a substantially reduced fee	897 provided 60,071 hours	972 provided 63,798 hours	803 provided 54,653 hours
Legal services to organizations that address the needs of persons of limited means (other than those above)	379 provided 18,678 hours	409 provided 19,658 hours	349 provided 15,146 hours
Service of activities improving the law or law related education	857 provided 30,798 hours	900 provided 32,558 hours	723 provided 26,609 hours

\* Some attorneys submitted reports with neither yes or no checked, yet noted information in the body of their reports.

\*\* Members still submitting reports

\*\*\* Note: \$24,000 donated by two attorneys

\*\*\*\* Attachment B contains actual funds received by the State Bar of Nevada via dues check off.

<b>Dues Check Off</b>			
<b>2009</b>			
District 1	\$76,700.00		
District 2	\$1,700.00		
District 3	\$13,575.00		
District 4	\$33,375.00		
District 5	\$27,160.00		
Total	\$152,510.00		
<b>2008</b>			
District 1	\$92,325.00		
District 2	\$4,460.00		
District 3	\$33,000.00		
District 4	\$1,650.00		
District 5	\$24,075.00		
Total	\$155,510.00		
<b>2007</b>			
District 1	\$54,545.00		
District 2	\$3,100.00		
District 3	\$3,800.00		
District 4	\$16,425.00		
District 5	\$14,430.00		
Total	\$92,300.00		
<b>2006</b>			
District 1	\$50,400.00		
District 2	\$2,820.00		
District 3	\$2,500.00		
District 4	\$17,475.00		
District 5	\$17,500.00		
Total	\$90,695.00		
<b>2005</b>			
District 1	\$47,300.00		
District 2	\$2,690.00		
District 3	\$3,500.00		
District 4	\$17,520.00		
District 5	\$17,350.00		
Total	\$88,360.00		

Totals as of 04/24/09

000122

# STATE BAR OF NEVADA

May 13, 2009

Honorable James Hardesty, Chief Justice  
Honorable Michael L. Douglas  
Supreme Court of Nevada  
201 S. Carson St.  
Carson City, NV 89701



600 East Charleston Blvd.  
Las Vegas, NV 89104-1563  
phone 702.382.2200  
toll free 800.254.2797  
fax 702.385.2878

9456 Double R Blvd., Ste. B  
Reno, NV 89521-5977  
phone 775.329.4100  
fax 775.329.0522

[www.nvbar.org](http://www.nvbar.org)

Dear Chief Justice Hardesty and Justice Douglas,

For your information, enclosed is a copy of the State Bar of Nevada mandatory pro bono reporting form that is sent each year to state bar members with the dues statements. Also enclosed is a table listing the data collected from this mandatory reporting form. Attachment A lists data from the 2006, 2007 and 2008 reporting years. Please note we are still compiling data from the 2008 reporting year. The members who have not yet sent their pro bono reporting forms have received a mandatory reporting form late notice.

Also enclosed is a chart (Attachment B) that provides information on the dollars contributed on the dues check off. We may receive a couple of additional contributions from those who are paying dues late, however at this point members who have not paid their dues are being assessed late fees and will have received their final dues notice on May 20, 2009, thus any added contributions most likely would be nominal.

Each year state bar staff assesses the format of the dues notice and mandatory forms; this year the state bar Board of Governors has appointed a taskforce to review the state bar dues invoice form and the questions/format of the mandatory documents to ensure clarity of the documents. Taskforce members will certainly coordinate with the Access to Justice Commission on the pro bono reporting form.

I would be happy to provide input on these matters should you require additional information.

Respectfully,

A handwritten signature in cursive script that reads "Kimberly Farmer".

Kimberly Farmer

cc: Bruce Beesley  
Kathleen J. England  
Kristina Marzec

000123

State Bar of Nevada 2008 Mandatory Documents

Full Name: \_\_\_\_\_ Bar Number: \_\_\_\_\_

**2007 Mandatory Report of Pro Bono (RPC 6.1)**  
**Reporting Period**  
**January 1, 2007 - December 31, 2007**

If a member (active, inactive, judge) fails to file the report required by this Rule, the State Bar shall impose a \$100 fine.

- I provided pro bono service as described in RPC 6.1.
- I did not provide any pro bono service as described in RPC 6.1

**CHECK/FILL IN ALL THAT APPLY:**

I provided \_\_\_\_\_ hours of direct legal services for no fee to low income clients.

I received my cases through:

- Clark County Legal Services/Pro Bono Project
- Las Vegas Senior Law Project
- Nevada Legal Services
- Volunteer Attorneys for Rural Nevada (VARN)
- Washoe County Senior Law Project
- Washoe Legal Services
- Other \_\_\_\_\_

I contributed money to organizations that provide pro bono services:

- \$ \_\_\_\_\_ Clark County Legal Services/Pro Bono Project
- \$ \_\_\_\_\_ Eighth Judicial Dist. PB Foundation (2007 only)
- \$ \_\_\_\_\_ Las Vegas Senior Project
- \$ \_\_\_\_\_ Nevada Legal Services
- \$ \_\_\_\_\_ State Bar of Nevada Dues Check Off
- \$ \_\_\_\_\_ Volunteer Attorneys for Rural Nevada (VARN)
- \$ \_\_\_\_\_ Washoe Co. ATJ Foundation (2007 only)
- \$ \_\_\_\_\_ Washoe County Senior Law Project
- \$ \_\_\_\_\_ Washoe Legal Services

I provided \_\_\_\_\_ hours of direct legal services at a substantially reduced fee.

I provided \_\_\_\_\_ hours of legal services to organizations that address the needs of persons of limited means.

I provided \_\_\_\_\_ hours of service of activities improving the law or law related education.

**To gain a statistical profile and better serve our membership, please complete our VOLUNTARY demographic survey.**

Please indicate your ethnicity.

- Asian/Pacific Islander
- Native/American Indian
- Hispanic/Latino
- Black/African American
- White/Caucasian
- Other \_\_\_\_\_

Are you a person with a disability?

- Yes (please check all that apply below)
  - Visual
  - Auditory
  - Orthopedic
  - Other \_\_\_\_\_
- No

Receive immediate confirmation and receipt!  
Please pay online and fill out all mandatory forms at:

[www.nvbar.org](http://www.nvbar.org)





**COURT OF APPEALS OF MARYLAND  
LAWYER PRO BONO LEGAL SERVICE REPORT**

This is a report of Pro Bono Legal Service under Rule 6.1 of the Maryland Lawyers' Rules of Professional Conduct. **YOUR COMPLETED LAWYER PRO BONO LEGAL SERVICE REPORT MUST BE SUBMITTED TO THE ADMINISTRATIVE OFFICE OF THE COURTS BY FEBRUARY 15, 2009. FAILURE TO DO SO MAY RESULT IN YOUR DECERTIFICATION TO PRACTICE LAW IN MARYLAND,** as provided in Rule 16-903. Your report is confidential under the Maryland Public Information Act, although the non-identifying data in it is not confidential.

**THE REPORTING PERIOD IS JANUARY 1, 2008 THROUGH DECEMBER 31, 2008.**

Please print or type your responses.

**NAME:** \_\_\_\_\_

**BUSINESS ADDRESS:** \_\_\_\_\_  
City \_\_\_\_\_, State \_\_\_\_\_, Zip \_\_\_\_\_

**TELEPHONE NUMBER:** \_\_\_\_\_

**WHERE I PRACTICE: Please select one (1) of the following:**

Private Firm \_\_\_\_\_, Corporate Counsel \_\_\_\_\_, Government Agency \_\_\_\_\_,  
Legal Services Org. \_\_\_\_\_, Public Interest Org. \_\_\_\_\_, Not Practicing \_\_\_\_\_

**If you selected 'Private Firm' above, please select one (1) of the following:**

Solo (1 lawyer) \_\_\_\_\_ Small Firm (2-5 lawyers) \_\_\_\_\_ Medium Firm (6-20 lawyers) \_\_\_\_\_  
Large Firm (21-49 lawyers) \_\_\_\_\_ Extra Large (50 lawyers and up) \_\_\_\_\_

**PRIMARY PRACTICE AREA[S]:** \_\_\_\_\_

**PRIMARY PRACTICE JURISDICTION[S]:** \_\_\_\_\_

(List your top 3 jurisdictions to include Maryland County names, Washington, DC or Out of State)

**DURING THE REPORTING PERIOD:**

1. I rendered the following number of hours of pro bono legal service without fee or expectation of fee, or at a substantially reduced fee: <sup>1</sup>

a. To people of limited means<sup>2</sup>, I donated \_\_\_\_\_ hours in total, and out of these total hours, \_\_\_\_\_ hours were spent in matters that were referred to me from a pro bono or legal services agency.

b. To charitable, religious, civic, community, governmental, or educational organizations in matters designed primarily to address the needs of people of limited means<sup>3</sup>, I donated \_\_\_\_\_ hours in total, and out of these total hours, \_\_\_\_\_ hours were spent in matters that were referred to me from a pro bono or legal services agency.

c. To individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties, or public rights, I donated \_\_\_\_\_ hours in total, and out of these total hours, \_\_\_\_\_ hours were spent in matters that were referred to me from a pro bono or legal services agency.

d. To charitable, religious, civic, community, governmental, or educational organizations in matters in furtherance of their organizational purposes, when the payment of the standard legal fees would significantly deplete the organization's economic resources or would otherwise be inappropriate, I donated \_\_\_\_\_ hours in total, and out of these total hours, \_\_\_\_\_ hours were spent in matters that were referred to me from a pro bono or legal services agency.

<sup>1</sup> Frequently Asked Question # 16, <sup>2</sup> Frequently Asked Question # 18, <sup>3</sup> Frequently Asked Question # 17  
(over)

2. The pro bono legal service hours reported above were rendered in the following areas of law:

3. (Note: This is a new question). Of the hours reported, I provided \_\_\_\_\_ pro bono hours assisting homeowners in distress through the Foreclosure Prevention Pro Bono Project (including staffing workshops, accepting case referrals, consulting with housing counseling agencies, etc.).

4. I devoted \_\_\_\_\_ hours to participating in activities for improving the law, the legal system, or the legal profession.<sup>4</sup>

Please specify: \_\_\_\_\_

5. I contributed a total of \$ \_\_\_\_\_ to one or more organizations that provide legal services to people of limited means.<sup>5</sup>

**DURING ALL OR PART OF THE REPORTING PERIOD:**

6. \_\_\_\_\_ I was prohibited by statute, ordinance, rule, or regulation from rendering pro bono legal service as described in Rule 6.1(b)(1) of the Maryland Lawyers' Rules of Professional Conduct.

7. \_\_\_\_\_ I was retired or not actively engaged in the practice of law.<sup>6</sup>

8. \_\_\_\_\_ I was practicing law part-time.<sup>7</sup>

\_\_\_\_\_  
**SIGNATURE OF LAWYER**

\_\_\_\_\_  
**DATE**

To find out more information concerning pro bono opportunities, please go to [www.probonomd.org](http://www.probonomd.org), or call the Pro Bono Resource Center of Maryland at 410-837-9379 or 800-396-1274.

**RETURN THIS REPORT TO:**

**ADMINISTRATIVE OFFICE OF THE COURTS  
P.O. BOX 319  
SIMPSONVILLE, MD 21150-0319**

***\*CHANGE OF ADDRESS ONLY\**** - Must be provided directly to the Client Protection Fund *in writing only*. 2011 Commerce Park Drive, Annapolis, MD 21401 or fax: 410-260-6363. Do not mail the reporting forms to this address. If you have any questions, contact CPF at (410) 260-3635.

<sup>4</sup> Frequently Asked Question # 23  
<sup>6</sup> Frequently Asked Question # 11

<sup>5</sup> Frequently Asked Question # 29  
<sup>7</sup> Frequently Asked Question # 11



PART III. CERTIFICATION

\*QUESTIONS 1, 6-9 MUST BE ANSWERED. Please check the category listed in Question #1 that is most appropriate for your status as of January 1, 2009. If you are unsure as to what constitutes the practice of law, please research the matter or engage an attorney to give you an opinion.

\*1. MEMBERSHIP STATUS (check one) Your answer should match your Status on the first page of this form.

- Private Practice, In House Counsel, Government, Judge, Foreign Law Consultant, Inactive-Voluntary, Inactive-Emeritus, Inactive Pro Bono, Affiliate, Pro Hac Vice

\*\* If you elect Private Practice, you must also answer Questions 2 and 3.

\*\*2. PROFESSIONAL LIABILITY INSURANCE (RHSC Rule 17(d)(iii))

Do you have Professional Liability Insurance coverage? Yes No

\*\*3. STRUCTURE OF PRACTICE : Solo Practitioner, firm of 2-5 attorneys, firm of 6-14 attorneys, firm of 15 or more attorneys

4. LICENSES IN OTHER JURISDICTIONS : (Please attach additional sheet if necessary)

License Number, Jurisdiction/State, Date of Admission

5. CLE Hours (optional)

During 2008, I have taken approximately hours of Ethics/Professionalism CLE
During 2008, I have taken hours of other CLE

\*6. DISCIPLINARY ACTION: (check one - required)

During 2008 have you been subject to any professional disciplinary action in any jurisdiction other than Hawaii?

- Yes. Please mail a copy of the disciplinary action to the Office of the Disciplinary Counsel, 1132 Bishop St., Ste. 300, Honolulu, HI 96813
No

\*7. CRIMINAL OFFENSES (check one - required)

During 2008, have you been arrested, indicted, or convicted of any criminal offenses, excluding petty misdemeanor or violations in any jurisdiction?

- Yes. Please mail details to the Office of the Disciplinary Counsel, 1132 Bishop St., Ste. 300, Honolulu, HI 96813
No

\*8. PRO BONO SERVICES (required) (See attached Reporting of Pro Bono Hours)

During 2008. I have provided hours of pro bono service.

\*9. Bar Journal/Bar Directory

- A) Would you like to receive the monthly Hawaii Bar Journal? Yes No
B) Would you like to receive the 2009-2010 HSBA Bar Directory? Yes No
(Members outside of Hawaii who elect "yes" will receive the HSBA Bar Directory on disk)

10. Ethnicity : Please indicate how you identify your race/ethnicity:

- Caucasian, Chinese, Filipino, Hawaiian, part Hawaiian, Other Pacific Islander, Korean, Japanese, Other

\*PRO HAC VICE ONLY - MUST BE ANSWERED

\*11. Name of Hawaii Attorney Associated With: Name: HSBA License # :

\*12. Case/s for which you have been admitted to Pro Hac Vice status.

a) Case Name : Court Approved date :
Case Number : Court Name :

If not previously registered as Pro Hac Vice, mail approved motion granting Pro Hac Vice to HSBA.

\*13. A. The above-referenced case(s) and/or Pro Hac Vice status have been concluded

B. My Pro Hac Vice status for the above-referenced case continues.

\*By executing this form, I certify my compliance with Supreme Court Rule 11 & Hawaii Rules of Professional Conduct Rule 1.15.
I also certify that the information included above in Parts I and III is complete and correct.

SIGNATURE: DATE:

PRINT NAME: ID#:

THIS FORM WILL NOT BE ACCEPTED AND YOUR 2009 RENEWAL WILL NOT BE EFFECTIVE UNLESS IT IS COMPLETE, SIGNED, DATED AND THE CORRECT PAYMENT IS RECEIVED. INCOMPLETE FORMS WILL BE SUBJECT TO LATE FEES.

2008-2009

**THE FLORIDA BAR**  
ANNUAL MEMBERSHIP FEES

**TRUST ACCOUNT COMPLIANCE CERTIFICATE FOR JULY 1, 2007 - JUNE 30, 2008 YEAR.**

I hereby represent that I have read the rules applicable to lawyer trust accounts (rule 4-1.5 and chapter 5) and that I or my law firm have complied with all applicable parts of the Rules Regulating The Florida Bar with respect to trust account records, if any, including required participation in the IOTA program, and maintenance of trust account records.  YES  NO

**ANNUAL PRO BONO REPORTING FORM (REQUIRED)**

*Be sure to completely blacken the circle where applicable.*

**PRO BONO REPORTING FOR JULY 1, 2007 - JUNE 30, 2008 YEAR.**

Pursuant to the reporting requirement of Rule 4-6.1(d), Rules Regulating The Florida Bar

*Please enter the number of whole hours*

- 1 I have personally provided pro bono legal services: (a)  "on my own." (b)  "through an organized legal aid program,"  hours
- 2 My firm provided pro bono services collectively under a plan with the following Florida Circuit Pro Bono Committee:  (circuit #) and I was allocated:  hours
- 3 I have contributed to a legal aid organization. Please enter amount.  whole dollars \$
- 4 I have not provided pro bono legal services to the poor this year or made a contribution to a legal aid organization.
- 5 During the reporting period, I did not provide pro bono legal services to the poor because I am: (choose one)
  - a member of the judiciary (a)  a governmental lawyer prohibited by statute, rule or regulation from providing services (c)  retired (d)
  - judicial staff (b)  INACTIVE (e)
- 6. None of the above applies to me, but I have provided legal services to the poor in the following special manner: (see instructions)

**COMMUNITY SERVICE (OPTIONAL) FOR JULY 1, 2007 - JUNE 30, 2008 YEAR**

**VOLUNTARY SURVEY**  
*for the purpose of showing the involvement of lawyers in community service.*

I have contributed community and public services in the following areas:

- Service to the legal community  hours
- Service to religious organizations  hours
- Service to civic organizations  hours
- Service to other charities/schools  hours

**Answering this question does not constitute compliance with required pro bono response.**

*Please enter the number of whole hours*

*Be sure to completely blacken the circle corresponding to your entry.*

**MEMBER DATA CHANGES**

Membership data can be changed any time at [www.floridabar.org](http://www.floridabar.org).

**CHANGE OF ADDRESS:** Members shall promptly notify the Bar of changes pursuant to Rule 1-3.3, Rules Regulating The Florida Bar. All such data contained in your membership record is public information. **CURRENT E-MAIL:**

Firm (optional)

Mailing Address

City/State/Zip

Physical Address

(Street address of your office must be provided if different from mailing address.)

City/State/Zip

Business Telephone  Extension  Fax # (optional)

E-mail (optional)

**COMPLETE FRONT AND BACK AND RETURN ENTIRE FORM TO MAINTAIN MEMBERSHIP STATUS**



**SECTION 3. MANDATORY PRO BONO REPORTING**

Pursuant to the Pro Bono Public Service Rules (Rule 16-601 and Rule 24-108 NMRA)

A lawyer should aspire to render at least fifty (50) hours of pro bono public legal services per year or alternatively or in addition to the service provided, a lawyer may fulfill this professional responsibility by:

(1) contributing financial support to organizations that provide legal services to persons of limited means in New Mexico, in the amount of five hundred dollars (\$500) per year; or

(2) provide a combination of pro bono hours and a financial contribution as suggested in the following table:

Pro Bono Hours	0	5	10	15	20	25	30	35	40	45	50+
Suggested Contribution	\$500	\$450	\$400	\$350	\$300	\$250	\$200	\$150	\$100	\$50	attorney discretion

**Pro Bono Certification.** Each lawyer of the bar shall annually certify whether the lawyer has satisfied the lawyer's professional responsibility to provide pro bono services to the poor by reporting the following information:

- (1) the number of hours the lawyer dedicated to pro bono legal services, and
- (2) if the lawyer has satisfied the obligation by contribution or part contribution, the amount of that contribution.

50 Pro Bono hours provided in 2008 Describe Briefly \_\_\_\_\_

Actual Pro Bono hours provided in 2008 \_\_\_\_\_ Describe Briefly \_\_\_\_\_

I did not meet my pro bono goal, but I wish to contribute \$\_\_\_\_\_ to the New Mexico State Bar Foundation for distribution to qualifying legal service providers (tax deductible).

I contributed to a legal aid service organization of my choosing

Please contact me about pro bono opportunities for the 2009 calendar year.

Sub Total \$

**SECTION 4. MANDATORY STATE BAR FEES**

- Active License (Admitted to practice before 1/1/07 in any jurisdiction)..... \$215
- Check Inactive Status Fee Waiver (Available only to attorneys on inactive status, 75 or older, who've practiced law in New Mexico 25 years or more. If you check this box, do not send any fees.
- Fee Waiver available for seventy (70) years of age or older, OR has a physical or mental impairment AND income less than \$30,000 in 2008. Available upon request. AFFIDAVIT REQUIRED.
- Legal services attorney discount available upon request. AFFIDAVIT REQUIRED.
- Military Mobilized Reservists fee waiver available upon request. AFFIDAVIT REQUIRED.

Add Late Fee if postmarked after Monday, February 2, 2009. \$100 Active; \$50 Inactive..... \$\_\_\_\_\_

For applications, affidavits, or more information, call (505) 797-6035, email dues@nmbar.org, or Fax to (505) 797-6019.

Visit the Web site www.nmbar.org and click on DUES to pay online or to obtain any of the forms mentioned above.

Active license fee includes \$125 subscription to the Bar Bulletin and \$35 for the Bar Directory. Sub Total \$ 215.00

**SECTION 5. MANDATORY DISCIPLINARY BOARD FEES**

- Disciplinary Fee (Judges and inactive members exempt). This is not a State Bar Fee. (Disciplinary fees are collected by the State Bar for the Disciplinary Board of the Supreme Court)..... \$150

Sub Total \$ 150.00

**SECTION 6. VOLUNTARY SECTION MEMBERSHIP ANNUAL DUES**

If you wish to join a section (voluntary dues), make your selection(s) below.

<input type="checkbox"/> \$15 Appellate Practice	<input type="checkbox"/> \$15 Elder Law	<input type="checkbox"/> \$20 Intellectual Property Law	<input type="checkbox"/> \$10 Public Law
<input type="checkbox"/> \$25 Bankruptcy Law	<input type="checkbox"/> \$15 Employment/Labor Law	<input type="checkbox"/> \$20 International/Immigration Law	<input type="checkbox"/> \$15 Real Property/Probate/Trust
<input type="checkbox"/> \$15 Business Law	<input type="checkbox"/> \$20 Family Law	<input type="checkbox"/> \$20 Natural Resources/Energy/Environmental Law	<input type="checkbox"/> \$15 Solo/Small Firm Practitioners
<input type="checkbox"/> \$15 Children's Law	<input type="checkbox"/> \$20 Health Law	<input type="checkbox"/> \$10 Prosecutors	<input type="checkbox"/> \$20 Taxation
<input type="checkbox"/> Free Criminal Law	<input type="checkbox"/> \$20 Indian Law		<input type="checkbox"/> \$10 Trial Practice

Sub Total \$

**SECTION 7. CONTRIBUTIONS (TAX DEDUCTIBLE)**

Center for Civic Values: Funds public service activities, including high school mock trial and the IOLTA grants program ..... \$\_\_\_\_\_

Equal Access to Justice Fund: Lawyers' campaign to fund four legal aid providers ..... \$\_\_\_\_\_

NM Women's Bar Scholarship Foundation: Scholarship fund for women law students at UNM ..... \$\_\_\_\_\_

UNM School of Law Library: Donations assist in enlarging the Law Library collection. .... \$\_\_\_\_\_

Pro Bono Interpreter Fund. Donations assist in paying for interpreters for attorneys' pro bono clients who are deaf or hard of hearing ... \$\_\_\_\_\_

Sub Total \$

**SECTION 8. VOLUNTARY BARS**

<p><b>Albuquerque Bar Association</b></p> <p><input type="checkbox"/> \$85 Over 2 years</p> <p><input type="checkbox"/> \$55 2 years or less</p> <p><input type="checkbox"/> \$25 Lawyer Referral Service (with membership)</p> <p><b>First Judicial District Bar Association</b></p> <p><input type="checkbox"/> \$25 Less than 3 years</p> <p><input type="checkbox"/> \$40 3 years or more</p> <p><input type="checkbox"/> \$0 Members and Clerks of the Judiciary</p>	<p><b>NM Hispanic Bar Association</b></p> <p><input type="checkbox"/> \$50 Over 5 years <input type="checkbox"/> \$25 5 years or less</p> <p><b>Hispanic National Bar Association</b></p> <p><input type="checkbox"/> \$20 If a member of the NM Hispanic Bar</p> <p><b>Indian Bar Association of NM</b> <input type="checkbox"/> \$20</p> <p><b>NM Black Lawyers Association</b> <input type="checkbox"/> \$25</p> <p><b>NM Lesbian &amp; Gay Lawyers Assn.</b> <input type="checkbox"/> \$35</p> <p><b>NM Women's Bar Association</b></p> <p><input type="checkbox"/> \$55 Over 3 years <input type="checkbox"/> \$40 3 years or less</p>	<p><b>NM Defense Lawyers Association</b> Members who devote majority of time to defense of civil litigation.</p> <p><i>Standard</i></p> <p><input type="checkbox"/> \$145 Over 5 years <input type="checkbox"/> \$80 5 years or less</p> <p><i>Public Sector</i></p> <p><input type="checkbox"/> \$100 Over 5 years <input type="checkbox"/> \$50 5 years or less</p> <p><i>Associate (no limit on nature of practice) Limited benefits.</i></p> <p><input type="checkbox"/> \$95</p> <p style="text-align: right;">Sub Total \$ <input type="text"/></p>
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I certify that the above information is true and correct. \_\_\_\_\_ Total Amount Remitted \$

Make checks payable to: State Bar of New Mexico Signature \_\_\_\_\_

Dues may also be paid online at the Bar's secured site at www.nmbar.org; or form may be faxed to (505) 797-6019.

MasterCard  VISA  Discover  American Express Credit Card # \_\_\_\_\_ Exp. Date \_\_\_\_\_ AT

**2009 ARDC REGISTRATION FORM - REVIEW BOTH SIDES.**

Registration Information Required by Supreme Court Rule 756: You Must Answer Questions Below and Make Any Necessary Changes on Page 2 to be Registered. Trust Account and *Pro Bono* Responses are Confidential. See Enclosed Notice of Registration for Detailed Instructions and Additional Information.

1. Do you currently maintain malpractice insurance?  Yes  No

2. If yes, please provide the beginning and end dates for your policy. (Do not send in malpractice policy documents. Keep them for a period of 7 years.)  
 From       To        
 M M D D Y Y M M D D Y Y

3. Do you/does your firm maintain a trust account to hold property of clients or third persons?  Yes  No

Previously, you reported information on the following trust account:

4. If "No trust account on file" is displayed above, skip this question (4). Otherwise, do you/does your firm still maintain the above-listed account as a trust account and is it accurately reported above?  Yes  No

5. If you/your firm has no trust account, or your/your firm's only trust account is stated accurately above, skip this question (5). Otherwise, for each trust account, except one recorded accurately above, provide the information required by lines a through d below. Use the boxes below for the first trust account and submit with this form, on a separate sheet, the same four pieces of information regarding additional accounts.

a. Name of Financial Institution

b. Account Number

c. Name of Account

d. Is this an IOLTA account?  Yes  No

6. If you/your firm do/does not maintain a trust account, why not? (Select most appropriate.)

- X  Full-time employee of a corporation or governmental agency (including courts), with no outside private practice.  
 Not engaged in the practice of law.  
 Engaged in private practice of law (to any extent), but you/your firm handle(s) no client or third party funds.  
 Other (Explanation required.) \_\_\_\_\_

7. Did you, within the past twelve months, provide any *pro bono* legal services as described in subparagraphs 9(a) through 9(d) below? (Consult enclosed instructions or [www.iardc.org](http://www.iardc.org) for information on *pro bono* reporting. Consult [www.illinoisprobono.org](http://www.illinoisprobono.org) for *pro bono* opportunities.)  Yes  No

8. If you answered no to question 7, are you prohibited from providing legal services because of your employment?  Yes  No

9. If you answered yes to question 7, identify the approximate number of hours provided in each of the following categories where the service was provided without charge or expectation of a fee. (Legal services for which payment was expected, but is not collectible, do not qualify as *pro bono* services.)

- (a)  ,    Hours of legal service to persons of limited means.  
 (b)  ,    Hours of legal service to charitable, religious, civic, community, governmental or educational organizations in matters designed to address the needs of persons of limited means.  
 (c)  ,    Hours of legal service to charitable, religious, civic, or community organizations in furtherance of their organizational purposes.  
 (d)  ,    Hours providing training that is intended to benefit legal service organizations or lawyers who provide *pro bono* services.

10. Have you, within the past twelve months, made a monetary contribution to an organization that provides legal services to persons of limited means or that contributes financial support to such an organization?  Yes  No

11. If you answered no to question 10, skip this question (11). If you answered yes, state approximate amount. (For information regarding law firm contributions, consult enclosed instructions or [www.iardc.org](http://www.iardc.org)) \$  ,    ,

Have you answered questions 1 through 11, except to the extent that you were advised to skip the question(s)?  
 Your registration is not complete if you have not done so.



Notice No:  
Invoice Date:  
Bar No:

## 2008-2009 Enrollment Fees

For fiscal year August 1, 2008 through July 31, 2009  
Tax ID No. 64-6000747

Current Membership Information
<p>Business Phone: _____</p> <p>Fax Number: _____</p> <p>E-mail Address: _____</p> <p>Firm Size: _____</p>

Address Corrections
Name _____
Firm _____
Firm Size: <input type="checkbox"/> Solo <input type="checkbox"/> 2-3 <input type="checkbox"/> 4-5 <input type="checkbox"/> 6-10 <input type="checkbox"/> 11-19 <input type="checkbox"/> 20+ <input type="checkbox"/> Gov. Ally. <input type="checkbox"/> In-House/Corp <input type="checkbox"/> Retired <input type="checkbox"/> Other
Street Address _____
City, State, Zip _____
Mailing Address _____
City, State, Zip _____
Business Phone _____
Fax _____
E-mail _____

Current Status:
<p>To change your status, mark one box below and write the fee amount in Section 1-B.</p> <p><input type="checkbox"/> I am currently on Active status and wish to change my status to Inactive (\$50 annually). I understand as an inactive member I am not authorized to practice law in the state of Mississippi. <i>Write \$50 in Section 1-B.</i></p> <p><input type="checkbox"/> I am currently on Inactive status and wish to change my status to Active (\$295 annually for a member admitted to practice over 3 years). <i>Write \$295 in Section 1-B. See Enrollment Fee Structure on reverse side if admitted less than 3 years.</i></p> <p><input type="checkbox"/> I have retired from the practice of law due to age, serious illness or permanent disability and wish to be placed on Inactive Exempt status, exempt from the payment of enrollment fees pursuant §73-3-125. I have included written verification. <i>Write \$0 in Section 1-B.</i></p>

Mandatory IOLTA Account Certification
<p>All members (active and inactive) are required by Rule 1.15 of the Mississippi Rules of Professional Conduct to annually certify that all IOLTA eligible funds are held in an IOLTA account unless otherwise exempt. To fulfill the annual certification requirements, please check one box below.</p> <p><input type="checkbox"/> I certify that all IOLTA eligible funds are held in an IOLTA account and I am in compliance with the requirements of Rule 1.15 MRPC.</p> <p><input type="checkbox"/> I am exempt since I am not engaged in the private practice of law.</p> <p><input type="checkbox"/> I am exempt since I do not have an office within the State of Mississippi.</p> <p><input type="checkbox"/> I am exempt since I am presently a judge, attorney general, public defender, U.S. attorney, district attorney, on duty with the armed services, a local, state or federal government employee, a corporate counsel or a teacher of law, and I am not otherwise engaged in the private practice of law.</p> <p><input type="checkbox"/> I have been exempted by the Mississippi Bar Foundation as provided by Rule 1.15 (e) MRPC.</p>

Calculations	
<b>1. Enrollment Fees</b>	
A. Current Year	\$ _____
B. New Status Fee	\$ _____
Enrollment Fee = A or B	\$ _____
Subtotal Enrollment Fees	\$ _____ <sup>1</sup>

2. Annual Pro Bono Reporting Period From August 1, 2007 — July 31, 2008	
Pursuant to the reporting requirements of Rule 6.1 (e) Mississippi Rules of Professional Conduct.	
<input type="checkbox"/> I provided _____ hours of pro bono legal services during the 2007-2008 reporting period.	
<input type="checkbox"/> My firm provided pro bono legal service collectively under a plan previously approved by The Mississippi Bar and I was allocated _____ hours of pro bono legal services during the 2007-2008 reporting period.	
<input type="checkbox"/> During the 2007-2008 reporting period, I did not provide pro bono legal services because I am exempt. Mark One:	
<input type="checkbox"/> Restricted from practicing law outside my employment	
<input type="checkbox"/> Judge/Judicial Staff	
<input type="checkbox"/> Government Lawyer	
<input type="checkbox"/> Employed by Legal Services Program	
<input type="checkbox"/> On Inactive Status with The Mississippi Bar	
<input type="checkbox"/> Retired or Disabled	
<input type="checkbox"/> I did not provide pro bono legal services to the poor during the 2007-2008 reporting period. State reason for non-compliance. (Attach separate letter if necessary): _____	
<input type="checkbox"/> I am making a voluntary 6.1 contribution to the Ensure Justice Campaign to fund legal services to the poor in Mississippi.	
Subtotal Rule 6.1 Contribution (optional)	\$ _____ <sup>2</sup>

3. Section Membership (optional)				
The Mississippi Bar's Sections are designed to offer members a closer association with other professionals in a similar legal specialty. Your current Section enrollment is marked in the Enrolled column. Indicate with an X any Section you wish to Add or Drop.				
Enrolled	Section	Dues	Add	Drop
	Alternative Dispute Resolution	\$15		
	Business Law	\$15		
	Estates & Trust	\$15		
	Family Law	\$15		
	Gaming Law	\$15		
	Government Law	\$15		
	Health Law	\$15		
	Intellectual Property	\$15		
	Labor and Employment Law	\$15		
	Litigation	\$15		
	Nat. Res., Energy & Env. Law	\$15		
	Prosecutors	\$15		
	Real Property	\$15		
	Taxation	\$15		
	Workers' Compensation	\$15		

Current Section Dues	\$ _____
Section Dues Added +	\$ _____
Sections Dues Dropped -	\$ _____
Subtotal Section Dues =	\$ _____ <sup>3</sup>

<b>4. Total Amount Enclosed</b>	
Add Totals for 1, 2, & 3	
Make payable to: The Mississippi Bar	\$ _____
Please return statement with your payment.	



**SUPPORTING JUSTICE II**  
**A REPORT ON THE PRO BONO WORK**  
**OF AMERICA'S LAWYERS**

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**AMERICAN BAR ASSOCIATION**  
**STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE**  
**321 N. CLARK STREET**  
**CHICAGO, ILLINOIS 60654**  
**WWW.ABAPROBONO.ORG**

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## **Supporting Justice II**

### ***Executive Summary***

#### **Introduction**

The results of the second national pro bono data collection study are in and the results are positive and encouraging. The American Bar Association Standing Committee on Pro Bono and Public Service (hereinafter “the Committee”) is charged with the responsibility to review, evaluate and encourage pro bono activity by attorneys, law firms, bar associations, corporate law departments and other legal providers. As part of its mission, the Committee supports pro bono publico programs, develops legislation, provides resources and undertakes initiatives that enhance the ability of lawyers to provide pro bono services. This report is a product of the Committee’s ongoing efforts to assess the level of pro bono participation in America and to identify strategies for growing the culture of pro bono legal services in the country.

The findings of the present study reflect increasing levels of attorney pro bono interest and participation. Both the overall percentage of pro bono participation and the average number of pro bono hours are on the rise. Valuable information about participation by various attorney demographic criteria is also provided. The study also provides new insight into how to recruit new pro bono attorneys and how to support them in their work.

#### **Background and Objectives**

The Committee commissioned a national pro bono survey in 2004 to establish an accurate and credible baseline for tracking and measuring individual attorney pro bono activity on a national basis. One goal of the Committee in undertaking this survey was to develop a valid and consistent methodology and set of tools for gathering pro bono data that could be used as a benchmark for future national and state studies. The Committee then used the results of this survey to promote and encourage pro bono activity around the country, and to create resources and materials for use on the state and local levels.

After the publication of the first study, the Committee determined that it was necessary to replicate the study in order to further clarify some of the original findings and to obtain a sense of whether pro bono participation has increased over time. In order to test specific questions, the Committee conducted a qualitative study that interviewed 40 attorneys about their definition of pro bono and the particulars of their pro bono practice. Once this was completed and the results analyzed, a second quantitative study was developed. This quantitative study, along with its 2004 counterpart, are the only statistically-valid national studies of their kind in the country and have been used as part of a larger effort to systematically assess the state of *pro bono* in the legal profession, develop a strategic plan to increase *pro bono*, and regularly measure progress in attorney pro bono participation

Based on the findings in the 2004 study and the subsequent qualitative study, new objectives for the 2008 study were defined. These objectives were as follows:



- 1) Quantify the amount of pro bono work done by attorneys, particularly work classified as Tier 1: provided at no cost to persons of limited means or to organizations that address the needs of persons of limited means.
- 2) Improve the ABA's understanding of how attorneys define pro bono work.
- 3) Obtain reactions to ABA initiatives that could encourage pro bono work.
- 4) Identify the characteristics of recent pro bono service (e.g. nature of the client, referral source, tasks done, consistency with expectations, etc.) that can be used to guide development of new pro bono initiatives and communication surrounding those initiatives.
- 5) Obtain demographic and work environment data (age, race, gender, work setting, etc.) that will permit analysis of the findings by subgroups of the attorney population.

## **Methodology**

To ensure consistency with the 2004 quantitative and 2007 qualitative studies, the Committee hired the consultant that had completed those studies, Calo Research Services, Inc., to interview 1,100 attorneys nationwide. This national attorney sample was developed as a "representative sample." Attorneys from every state in the nation participated in the 2008 study, with the distribution of lawyers by state reflecting attorney populations therein.

The attorney sample for this survey was distributed over three practice settings: Private Practice (83%), Corporate Counsel (9%), and Government (8%). Within the private practice segment, the sample of 914 attorneys was further stratified by firm size.

The format of the survey outlined a series of general questions followed by more specific ones. In particular, the attorneys were asked general questions about their demographics, their definitions of pro bono service and the amount of pro bono they did within the last year. These general questions were followed up with more specific inquiries asking about the attributes of an attorney's most recent (i.e. typical) pro bono case. The purpose of this format was to assess whether attorneys' general perceptions about pro bono translated to their particular practice.

## **Key Findings**

### **Defining Pro Bono Service**

The majority of attorneys interviewed (64%) indicated that legal work had to be delivered free to be considered pro bono. When attorneys were asked about their most recent case in the past year, however, 90% of the attorneys indicated that they had provided legal services for free. When serving a person, more than two-thirds of the attorneys agreed that the person had to be of limited means. If the client is an organization, most of the attorneys (72%) believed that only some not-for-profit organizations qualify for pro bono representation. About one third of the attorneys felt that a for-profit organization could also qualify for pro bono representation. Responding to a provided list of activities that were not legal services, most of the attorneys were

willing to accept that some activities other than the direct provision of legal services could be considered pro bono.

### Past Year Pro Bono Service

The survey found that during the twelve months preceding the survey, 73% of respondents provided free legal services to persons of limited means or to organizations that address the needs of persons of limited means (i.e. Tier 1 service). The study findings indicate that the average attorney reported providing 41 hours of Tier 1 service during this time period. Overall, approximately one-fourth of the sample indicated that they had provided 50 hours or more of free legal services to persons of limited means or to organizations that support the needs of persons of limited means. Approximately one-third of the attorneys indicated that they performed some form of pro bono service in the last year that did not meet the Tier 1 definition. Approximately one-fifth of the attorneys participating in the study stated that they did not do any form of pro bono work in the past year.

### Attributes of Most Recent Pro Bono Service

In describing their most recent pro bono service, the vast majority of attorneys who had provided pro bono in the past year reported that their most recent work was provided for free. Notably, 82% of these attorneys indicated that the number of hours provided and the tasks that they performed were consistent with their expectations (94%).

Two-thirds of the attorneys who had provided pro bono service in the past year indicated that the entity served was a person rather than an organization. Slightly fewer than half indicated that the client was referred to them, with a legal aid organization clearly being the number one source of referrals. Overwhelmingly, attorneys receiving a referral were familiar with the referral source before accepting the client. Forty-three (43%) percent of those who had indicated some pre-existing familiarity with the referral source or the client believed that they would have accepted the engagement on a pro bono basis even if both parties had been unknown to them.

### Encouraging Pro Bono Activity

More than three-fourths of those who had performed pro bono service in the past year indicated that they do not seek out pro bono opportunities: the opportunities find them. Both providers and non-providers of pro bono identified that providing free training or CLE credit for pro bono and giving the attorney the ability to define the scope of the engagement were the most powerful incentives to encourage greater pro bono activity.

### Discouraging Pro Bono Activity

Non-providers identified a lack of time as the primary reason for not providing pro bono service. Also, the findings indicate that the employer's attitude towards pro bono activity seems to have a significant impact on attorney willingness to do pro bono. Attorneys who provided pro bono were significantly more likely to indicate that their employers encourage pro bono service (72%) than were the non-providers (36%). Non-providers were significantly more likely than the providers to feel that their employer had no clear pro bono policy or that their employer discouraged pro bono service. Notably, 27% of non-providers in the private practice setting indicated that no one had asked them to provide pro bono.

## **Implications for Moving Forward**

From the results it is clear that pro bono participation continues to improve both in terms of number of individuals providing service and the number of hours individuals contribute. In addition to demonstrating trends over time, the 2008 study also demonstrates how attorneys' general perceptions of pro bono translate to their particular practice. The results also indicate that attorneys do not feel overwhelmed by the number of pro bono hours their pro bono work involves. Interviewees also reported that their tasks did not involve work outside their expectations.

The findings of this study reflect that a large number of lawyers have a profound sense of responsibility to do pro bono work and gain personal satisfaction from doing so. The great majority of lawyers provide pro bono service of some nature. The Committee recognizes the need for developing valid and credible tools for understanding the level and substance of attorney pro bono activity on national, state and local levels. The Committee views this study as a step in designing and making available such tools. This study is a statistically-based attempt to comprehensively evaluate the state of *pro bono* work in the legal profession, not just work performed through *pro bono* programs or law firms. As such, it is a tremendous step towards formalizing and rationalizing understanding of *pro bono* practices and what concrete steps may be taken to increase the level of pro bono activity nationally.

## **Conclusion**

Based on the results of the 2008 study the Committee is positioned to create new, effective strategies for helping its constituents increase pro bono opportunities and participation. Some initiatives that the Committee expects to pursue include: 1) Increasing employer policies that encourage pro bono practice; 2) Cooperating with constituents on developing their own data collection tools to replicate this study on a statewide or local level and 3) Providing strategies to pro bono organizations and bar associations on how to best recruit attorneys as volunteers. The Committee also hopes to continually improve the survey used in the study to obtain more information about particular demographic groups and continue to track pro bono participation over time.

## Introduction

Pro Bono Publico is fundamental to the culture of the legal profession and has long been viewed as an ethical responsibility of attorneys – both informally and formally – since the beginning of the profession. Ample evidence demonstrates pro bono’s growth in the last 25 years. Information about the development and current national picture of pro bono can be found in Appendix A.

Until recently there has been little national quantitative data to help illuminate the extent of this growth and the nature of the pro bono work done by individual attorneys. In 2004, the American Bar Association (ABA) Standing Committee on Pro Bono and Public Service conducted a study to develop a national, comprehensive profile of attorneys doing pro bono to enable the ABA to better support their efforts and to help others provide pro bono service. The 2005 report that was published from the 2004 data is entitled: **Supporting Justice: A Report on the Pro Bono Work of America’s Lawyers.**<sup>1</sup>

Since the time of its publication, the Committee has been involved in several initiatives to support pro bono that arose from the findings of this first study. A description of these initiatives can be found at the end of the report in Appendix B. The Committee determined early on that it was necessary to replicate the original study in order to further clarify some of the original findings and to obtain a sense of whether pro bono participation has increased over time. The results of this new study are described below.

## Overview

This report is a result of a one year study measuring the amount of pro bono work being done by attorneys in the United States, how attorneys are defining pro bono, and the reasons why attorneys provide, or choose not to provide, free legal assistance to people of limited means. The survey consisted of telephone conversations with 1,100 attorneys throughout the country in private practice, corporate counsel and government settings.<sup>2</sup>

This survey inquired about practicing attorneys’ pro bono contributions over a one-year period from approximately April 2007 to April 2008, asking how much and what kind of volunteer legal services they provided, from whom they received their cases, how they defined pro bono and descriptions of their most recent pro bono experience. Key findings of the National Pro Bono Survey include:

- ▶ Pro bono service provided by attorneys has increased since the 2005 study. Approximately three-fourths of the attorneys (73%) provided some amount of pro bono to persons of limited means or to organizations in matters which are designed primarily to address the needs of persons of limited means (hereinafter referred to as Tier 1 pro bono) – an increase from the 66% reported in 2005. Also, attorneys on average reported providing 41 hours of Tier 1 pro bono service in the past year, up from 39 hours reported in 2005.<sup>3</sup>

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<sup>1</sup> To review a copy of the report, see [www.abaprobono.org/report.pdf](http://www.abaprobono.org/report.pdf).

<sup>2</sup> For more information, see the Methodology section at page 7.

<sup>3</sup> This is a directional, but not statistically significant, increase.

- ▶ The vast majority of reported pro bono service was provided for free rather than at a substantially reduced rate.
- ▶ The number of pro bono hours that attorneys provide, and the tasks that they perform, are typically consistent with their expectations and skills. Additionally, most attorneys do not express concern about their pro bono matter being outside of their usual practice field.
- ▶ The employer's attitude towards pro bono activity has a significant impact on the attorney's behavior.
- ▶ Most attorneys do not look for pro bono opportunities—the opportunities find them.
- ▶ Private practitioners do a larger amount of pro bono hours than attorneys in the corporate and government sectors.

In order to have some perspective on these national findings, it is important to review how other organizations and entities have evaluated pro bono. As a direct result of the growth of pro bono over time, there has been an increasing interest in recent years in measuring how much pro bono work lawyers are performing. Measurement of pro bono participation has been adopted by state bar associations, law firms and the legal media.

For the past few years, state bars have been measuring the amount of pro bono being done through surveys and voluntary or mandatory reporting. Individual organizations are also collecting and reporting information. For example, Mississippi adopted a required pro bono reporting rule in March 2005 and reported that attorneys provided 179,285 hours of pro bono in 2007 (approximately 38 hours per attorney). Hawaii completed its first year of mandatory pro bono reporting for calendar year 2007 and approximately 47% of respondents indicated doing some pro bono service during the year, for a total of 204,540 hours (approximately 62 hours per attorney).<sup>4</sup>

Findings can also be reviewed in the context of large law firms. Each year *American Lawyer Magazine (AmLaw)* surveys what it identifies as the top firms about the amount of pro bono performed during the prior year and the number of lawyers in each firm who participate. According to *AmLaw*, 2007 was a notable year for pro bono work nationally. The average *AmLaw* 100 firm provided 25,893 hours, up 13.2 percent from 2006. Total hours grew to 4.8 million -- a record -- and the number of lawyers doing more than 20 hours of pro bono work rose 12 percent, to 38,196. On average, pro bono hours per lawyer rose 7.7 percent to 53.6 hours.<sup>5</sup> To put it into perspective, those large law firms represent approximately only 16% of practicing attorneys nationwide<sup>6</sup>, meaning the figures do not include any of the pro bono being done by solo practitioners and those in small and medium firms.

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<sup>4</sup> When looking only at attorneys who did pro bono, the ABA study found that the average number of hours per attorney was 55. Although this number is within the range of other state findings related to the average number of hours of pro bono per reporting attorney, comparisons must be interpreted with caution as states may have broader definitions of pro bono than the Tier 1 measurement that was the primary focus of this report.

<sup>5</sup> Information obtained from the *American Lawyer Magazine*- July, 2008.

<sup>6</sup> The 2005 American Bar Foundation Lawyer Statistical Report identifies that 16.2% of attorneys work in law firms of 100+ attorneys.

Looking at volunteerism more generally, the percentage of the United States population who did volunteer work from September 2006 – September 2007 was 26.2%.<sup>7</sup> Volunteers spent a median of 52 hours on volunteer activities. These statistics encompass both lawyers and non-lawyers, and include all types of volunteer activities, but offer a comparative perspective for the analysis of pro bono work done by attorneys.

### **A History of the Pro Bono Committee's Data Collection Project**

The ABA Standing Committee on Pro Bono and Public Service is charged with the responsibility to review, evaluate and encourage pro bono activity by attorneys, law firms, bar associations, corporate law departments, and other legal providers. As part of its mission, the Pro Bono Committee, and its project the Center for Pro Bono, support pro bono publico programs, provide resources and undertake initiatives that enhance the ability of lawyers to provide pro bono services.

The Pro Bono Committee conducted its data collection study in 2004 to establish an accurate and credible baseline for tracking and measuring individual attorney pro bono activity on a national basis. The Committee commissioned Calo Research Services, Inc. of Cincinnati, Ohio to administer the survey. One goal of the Committee in undertaking the survey was to develop a model methodology and set of tools for gathering pro bono data that could be used as a benchmark for consistent future national and state studies.

The methodology employed in the 2008 study was similar to that used in 2004. One difference is that the information obtained for the current study, about the proportion of attorneys in private practice, corporate and government settings, was taken from the American Bar Foundation's *2005 Lawyer Statistical Report* publication.<sup>8</sup> Sampling guidance from the 2004 study was drawn from the *2000 Lawyer Statistical Report*.

### **A Brief Summary of the Results of the 2004 Data Collection Study**

In 2004, 66% of the respondents reported providing some level of free pro bono services to people of limited means and/or to organizations serving the poor. Considering all attorneys interviewed (i.e., providers and non-providers of pro bono service) the attorneys reported, on average, providing approximately 39 hours of free pro bono service to persons of limited means or to organizations serving the poor. Forty six percent (46%) of the attorneys surveyed met the ABA's aspirational goal of providing at least 50 hours of free pro bono services.

There was a direct correlation between age and incidence of providing pro bono. Older attorneys were more likely to report doing pro bono than younger attorneys. The prime motivator for attorneys who did pro bono was the combined sense of professional duty and personal satisfaction derived from the work. The main discouragement from doing pro bono work, or doing more, was lack of time (69%).

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<sup>7</sup> The Corporation for National and Community Service reports a similar finding of 27.2% of individuals in America who volunteered each year from 2005 to 2007. These statistics are focused on the provision of all types of volunteer services, however, as opposed to just the provision of pro bono services which is the focus of this study.

<sup>8</sup> This report has not yet been published and the data are preliminary.

The results also indicated that providing pro bono work by substantially reducing legal fees was much less common than providing free legal services. Only 33% of the attorneys indicated doing any “substantially reduced fee” pro bono work. And, in terms of client source, 40% of clients were referred by a friend or family member and 36% were referred by some type of organized pro bono program.

### **Issues within the 2004 Data Collection Study that Merited Further Investigation**

As a result of the 2004 findings, the Committee wished to explore further the relationship between attorneys and their pro bono service. For example, the Committee desired more detailed information on how attorneys were defining pro bono – in particular, whether they classified certain activities (e.g., representing a non-indigent government official, serving on the board of a nonprofit) as pro bono activities. Correspondingly, the Committee wanted to ascertain how attorneys were defining “a person of limited means” and what information they were relying on to make this assessment. Other issues the Committee wanted to explore further included:

- 1) Attributes of the most recent pro bono work that had been performed (obtaining clarifying information on the referral source of the client, consistency of expectations, etc.).
- 2) Attorney attitudes toward pro bono work (being reactive vs. proactive in response to opportunities, factors encouraging/discouraging pro bono work, etc.) and
- 3) Demographic distinctions across the different variables measuring pro bono.

### **Development of an Interim *Qualitative* Data Collection Study**

In order to obtain more detailed information and explore new areas of questioning in depth, the Pro Bono Committee commissioned Calo Research Services, Inc. to formulate and perform a qualitative study in 2007 which consisted of 40 comprehensive telephone interviews with attorneys inquiring about their pro bono service.<sup>9</sup> The purpose of this study was to both illuminate the findings of the 2004 quantitative research and to provide guidance for a follow-up study. The qualitative format allowed for more open-ended questions and a richer information base from which to draw in developing a subsequent quantitative questionnaire. The attorney sample consisted of private practice, government, and corporate attorneys.

The study found that attorneys’ initial definitions of pro bono service, offered without any guidelines from the interviewers, focused on the services being free (95%) or delivered at a reduced cost (30%) to a deserving client. Among the respondents who described a typical pro bono engagement in the previous five years, the referral source for the client was most often identified as family/friends or a legal aid organization or program.

Exactly half of those who provided pro bono service within the previous five years indicated that for their most recent (typical) pro bono experience, they knew the client before the legal

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<sup>9</sup> Calo Research Services also conducted the Committee’s 2004 study.

representation began.<sup>10</sup> Slightly more than half of those who knew the client beforehand indicated they would have accepted the client on a pro bono basis without the pre-existing relationship.

Respondents reported that the client's inability to pay for representation was the key determinant in assessing whether the prospective client deserved pro bono representation. Services were typically delivered for free, with that agreement made before the services were rendered.

There was little substantive commonality to the legal matters handled by those who had provided pro bono service within the previous five years, but there was a cluster of common tasks. The majority of respondents also indicated that the length of the engagement was consistent with their expectations.

Most of the attorneys indicated that they were more reactive than proactive concerning pro bono opportunities – the opportunities tended to find them. Key motivators of pro bono service among pro bono providers were an awareness of needs, the personal satisfaction of giving back to the community, and the belief that attorneys have an obligation to give back to the community. The key factors discouraging pro bono service among all attorneys were a perceived lack of time and concerns about the potential for a mismatch between opportunities and skills. Attorneys indicated that matching an attorney with co-counsel specializing in the legal matter and allowing the attorney to define the scope of the engagement would be two factors that would encourage attorneys to do more pro bono.

### **Objectives and Design of the ABA's 2008 National Pro Bono Study**

To ensure consistency with the 2004 quantitative and 2007 qualitative studies, the Pro Bono Committee again commissioned Calo Research Services, Inc. to formulate and perform the survey. Based on the findings in the 2004 study and the subsequent qualitative study, new objectives were defined. The objectives for the 2008 study were as follows:

- 1) Quantify the amount of pro bono work done by attorneys, particularly work classified as Tier 1: provided at no cost to persons of limited means or to organizations that address the needs of persons of limited means.
- 2) Improve the ABA's understanding of how attorneys define pro bono work.
- 3) Obtain reactions to ABA initiatives that could encourage pro bono work.
- 4) Identify the characteristics of recent pro bono service (e.g., nature of the client, referral source, tasks done, consistency with expectations, etc.) that can be used to guide development of new pro bono initiatives and communication surrounding those initiatives.
- 5) Obtain demographic and work environment data (age, race, gender, work setting, etc.) that will permit analysis of the findings by subgroups of the attorney population.

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<sup>10</sup> Our studies have shown that for approximately nine out of ten attorneys, the "most recent" pro bono engagement was typical of their pro bono experiences. The few who felt it was not were asked to think of a more typical engagement. Therefore, "most recent" and "typical" can be viewed as synonymous.





# About the Nevada Foreclosure Mediation Program

## CREATING THE PROGRAM

Assembly Bill 149 was passed by the Nevada Legislature during the 2009 session and signed by Governor Jim Gibbons. Its purpose is to address the foreclosure crisis head-on and to help keep Nevada families in their homes.

This law establishes a Foreclosure Mediation Program for owner-occupied residential properties that are subject to foreclosure notices – formally known as a *Notice of Default and Election to Sell* – filed on or after July 1, 2009. To qualify for the mediation program, a property must be a homeowner's primary residence and located in Nevada.

## WHAT YOU NEED TO KNOW ABOUT FORECLOSURE MEDIATION

Mediation is an alternative method to help parties resolve disputes by agreement with the help of trained mediators. Mediating a foreclosure action has its advantages. It is fast, inexpensive, and offers a flexibility that more formal processes do not.

Home foreclosures impact both the homeowner and the lender. Homeowners do not want to lose their homes and mortgage lenders do not want to be in the real estate business.

Both sides may benefit through foreclosure mediations.

## WHY SHOULD YOU MEDIATE?

**You can play a major role**, with the help of a trained mediator, in deciding the outcome of your individual dilemma. Mediation is a give-and-take process in which the parties work to reach a mutually acceptable resolution to a mutual problem. Resolutions reached through foreclosure mediations are compromises that offer advantages to lenders as well as homeowners.

If you have the ability to meet the other party half way, everyone may benefit.

- Can you, as a homeowner, make your mortgage payments if your home loan is modified?
- Can you, as a lender in today's real estate market, modify a loan to the extent that the homeowner can perform?

If the answers are YES, the Foreclosure Mediation Program may be able to save another Nevada home.

## WORKING FOR A RESOLUTION

Sometimes the parties will not be able to reach an agreement, even with the help of a trained mediator, and the home will be lost to foreclosure. That is a reality in today's economy.

But by working together to explore the various options, the hope is that a homeowner can avoid foreclosure and continue living in the home they purchased. If the mediation is successful, the homeowner may also avoid the stigma of foreclosure that can affect a person's ability to obtain credit for years to come.

However, if a homeowner does not have the financial ability to make mortgage payments, even if the loan is modified, foreclosure may ultimately result.

### **MEDIATION IS QUICK AND EFFICIENT**

Proposed Supreme Court rules limit mediations to four hours and require that mediations be conducted within 90 days of a foreclosure notice being filed.

Those same rules also require that all decision makers be present for the mediations. That means, if an agreement is reached, it can be finalized quickly.

### **MEDIATION IS COST EFFECTIVE**

Other than the filing fee paid by the lender, the cost of mediation is \$400, shared equally by the homeowner and the lender. Each party must pay their \$200 portion prior to the mediation.

A lawyer is not required to be present with you in the mediation process, but each side is welcome to have an attorney represent them.

### **AT THE CONCLUSION OF THE MEDIATION ...**

Within 10 days of the mediation, the mediator will prepare the necessary Statement of Agreement or Non-agreement and serve it on the parties. The original will be filed with the Foreclosure Mediation Program Administrator and the mediation will be closed. If there is an agreement, the parties will execute the appropriate documents. If there is no agreement, the parties will be free to pursue other legal remedies.

STATE OF NEVADA  
FORECLOSURE MEDIATION PROGRAM

**ELECTION/WAIVER OF MEDIATION FORM**

<i>(To be filled out by Trustee)</i>			
PROPERTY ADDRESS _____		TS # _____	
_____		APN _____	
TRUSTEE _____		DoT _____	Book/Inst _____

**\*\*\*ATTENTION—YOU MUST ACT WITHIN THIRTY (30) DAYS\*\*\*  
IF NO ACTION IS TAKEN, THE FORECLOSURE MAY PROCEED**

You have been served with a Notice of Default and Election to Sell, a copy of which is enclosed, that could result in the loss of your home. You may want to consult with an attorney concerning your rights and responsibilities.

The State of Nevada has created a mediation program for homeowners whose owner occupied, primary residence is subject to foreclosure. Mediation is a process through which you and the lender meet with a neutral mediator to determine whether an agreement can be reached to cure any defaults in the loan or modify the terms of the loan to enable you to remain in your home. The mediator will be appointed by the Foreclosure Mediation Program Administrator. The mediator will not provide legal advice to either party. If you feel the need for legal representation, it is recommended that you retain an attorney to assist you in the mediation.

Your Name(s): \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Co-owner's Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Phone No: (    ) \_\_\_\_\_ (telephone)  
                  (    ) \_\_\_\_\_ (cellular)

Phone No: (    ) \_\_\_\_\_ (telephone)  
                  (    ) \_\_\_\_\_ (cellular)

Email: \_\_\_\_\_

Email: \_\_\_\_\_

PLEASE SELECT ONE OF THE CHOICES BELOW AND RETURN COPIES IN ENCLOSED ENVELOPES.			
<p>_____ ELECTION OF MEDIATION</p> <p>_____ WAIVER OF MEDIATION</p>	<p>The undersigned hereby request[s] that a mediation be scheduled to attempt to work out a resolution of the loan. (\$200.00 Money Order or Cashier's Check Applies – See Below)</p> <p>The undersigned is/are aware of the right to seek mediation but have determined that I/we do not want to proceed with a mediation and hereby waive the right to do so.</p>		
<p>The undersigned hereby certify under the penalty of perjury that I/we are the owner[s] of the real property that is the subject of the pending foreclosure and occupy the real property as my/our primary residence.</p>			
<p>_____ Signature of Property Owner</p>	<p>_____ Date</p>	<p>_____ Signature of Co-Owner</p>	<p>_____ Date</p>

COMPLETE TWO COPIES OF THIS FORM AND FORWARD ONE TO THE MEDIATION ADMINISTRATOR AND THE OTHER TO THE TRUSTEE OF THE DEED OF TRUST. TWO UNSTAMPED, PRE-ADDRESSED ENVELOPES HAVE BEEN ENCLOSED.

IF YOU HAVE CHOSEN TO SEEK MEDIATION, YOU MUST SEND A MONEY ORDER OR CASHIER'S CHECK IN THE SUM OF \$200 PAYABLE TO: "STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM." THIS PAYMENT MUST BE RETURNED, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, WITHIN 30 DAYS OF THE DATE OF SERVICE OF THE NOTICE OF DEFAULT AND ELECTION TO SELL.

**PAYMENT MUST BE SENT TO THE TRUSTEE IN THE ENVELOPE THAT WAS ENCLOSED WITH THIS FORM.**

**DO NOT SEND PAYMENT TO THE MEDIATION ADMINISTRATOR.**

STATE OF NEVADA  
FORECLOSURE MEDIATION PROGRAM

**ELECTION/WAIVER OF MEDIATION FORM**  
**Instructions**

The Election/Waiver of Mediation is for owner-occupied residential property only. This form is not for use with vacation homes, rental property, or any other property where the owner does not live in the property as a primary residence. This form should come to you from the lender; you cannot begin this process yourself by using this form.

The ELECTION/WAIVER OF MEDIATION form has been provided to you in duplicate. (You may make additional copies if needed.) You must fill out the forms in duplicate so that the same information is included on both copies of the forms. You must fill in the blanks on both forms and make your election to either request mediation or waive mediation.

Print your name and address in the spaces provided. Include your telephone numbers and your email address. If you have a co-owner, their name, address, phone numbers and email address should be included. This information will only be used for the mediation process.

In the designated location, you must select (with a check mark or "X") one of two choices. You may only select one of the two options. Either select:

1. "\_\_\_ ELECTION OF MEDIATION" if you choose to enter into the Mediation Program;

**OR**

2. "\_\_\_ WAIVER OF MEDIATION" if you do not want to participate in the foreclosure Mediation Program.

You must then sign and date each form. NOTE that by signing the form you are certifying under penalty of perjury that you own and occupy the subject property as your primary residence.

Sign each form. One copy of the form must to be mailed to the Trustee of the deed of trust and one copy of the form must be mailed to the Mediation Administrator. The envelopes provided are preaddressed to the Trustee and Mediation Administrator. **You must mail both envelopes by Certified U.S. mail, return receipt requested.** You will need to pay the postage for the mailings. **Do not mail your payment to the Mediation Administrator.**

If you elect mediation, you must **include the \$200.00 mediation fee along with the form in the envelope addressed to the trustee.** The \$200.00 mediation fee must be paid in the form of a money order or cashiers check and made payable to: "State of Nevada Foreclosure Mediation Program".

If you choose to forego or waive mediation, there is no need to send the \$200.00 mediation fee. However, whether you elect to enter into the mediation program or elect not to participate in mediation, **both forms should be mailed.** If you do not mail the forms to the Trustee and the Mediation Administrator, you will not be allowed to participate in the mediation program and the foreclosure will proceed. This is your only opportunity to elect to participate in the foreclosure mediation process.

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ADOPTION  
OF RULES FOR FORECLOSURE  
MEDIATION

ADKT No. 435

**FILED**

JUN 30 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Tracie K. Lindeman*  
CHIEF DEPUTY CLERK

ORDER ADOPTING FORECLOSURE MEDIATION RULES

WHEREAS, on June 5, 2009, the Hon. James W. Hardesty, Chief Justice of the Nevada Supreme Court, filed a petition in this court requesting the adoption of rules for the foreclosure mediation program established by AB 149, and

WHEREAS, this court conducted public hearings on the proposed rules on June 16, 2009, and June 26, 2009, and

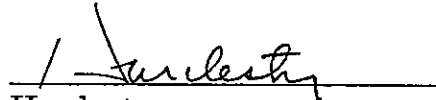
WHEREAS, this court has concluded that adoption of the rules is warranted, accordingly

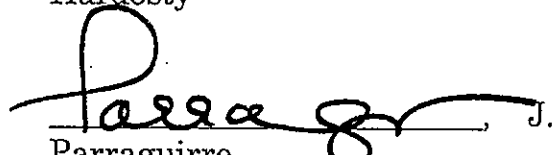
IT IS HEREBY ORDERED that the Foreclosure Mediation Rules are adopted as set forth in Exhibit A.

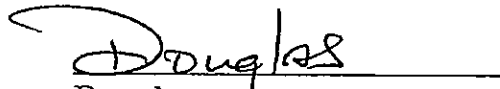
IT IS FURTHER ORDERED that these rules shall be effective July 31, 2009. The clerk of this court shall cause a notice of entry of this order to be published in the State Bar of Nevada's official publication. The clerk shall publish this order by disseminating copies of it to all subscribers of the advance 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 that she has accomplished the above-described

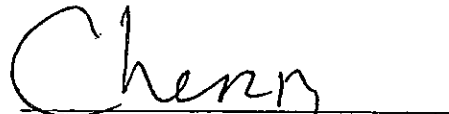
publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rules.

Dated this 30<sup>th</sup> day of June, 2009.

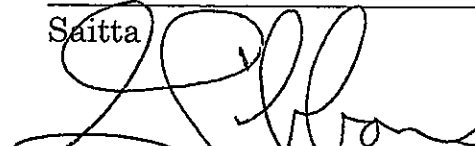
  
Hardesty, C.J.

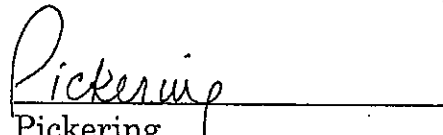
  
Parraguirre, J.

  
Douglas, J.

  
Cherry, J.

  
Saitta, J.

  
Gibbons, J.

  
Pickering, J.

cc: Hon. Jim Gibbons, Governor  
Senator Steven Horsford  
Senator William Raggio  
Assemblywoman Barbara Buckley  
Assemblywoman Heidi Gansert  
All District Court Judges  
Kathleen J. England, President, State Bar of Nevada  
Kimberly Farmer, Executive Director, State Bar of Nevada  
Board of Governors, State Bar of Nevada  
Clark County Bar Association  
Washoe County Bar Association  
First Judicial District Bar Association  
Nevada Justice Association  
Legal Aid Center of Southern Nevada  
Nevada Legal Services  
Washoe Legal Services  
Volunteer Attorneys for Rural Nevadans  
Nevada Association of Counties  
Nevada Bankers Association  
Nevada Land Title Association  
Administrative Office of the Courts



**EXHIBIT A**  
**FORECLOSURE MEDIATION RULES**

**I. SCOPE OF RULES**

**Rule 1. The Foreclosure Mediation Program.**

1. *Authority and scope.* Pursuant to the jurisdictional authority provided by Chapter 107 of the Nevada Revised Statutes and the Nevada Supreme Court's inherent power to create rules for the efficient administration of justice, these rules are enacted to apply to the mediation of any owner-occupied residential foreclosure arising from the recording of a notice of default and election to sell on or after July 1, 2009.

2. *Purpose.* The purpose of these rules is to provide for the orderly, timely, and cost-effective mediation of owner-occupied residential foreclosures which shall take place within 90 days after the recording of the notice of default and election to sell. The Foreclosure Mediation Program will permit deed of trust beneficiaries (lenders) and homeowners, with the assistance of a mediator, to exchange information and proposals that may avoid foreclosure.

3. *Availability of program.* Subject to limited exceptions set forth in Rule 5 hereafter, the Foreclosure Mediation Program is mandatory when the grantor or person who holds title of record of an owner-occupied residence timely requests mediation.

**Rule 2. Mediation Administrator.** The Mediation Administrator (Administrator) shall be appointed by the Court or its designee. The Administrator may appoint staff, including a Mediation Supervisor, to assist in the administration of the program. When the efficient administration of the program warrants, the Administrator may contract for training and other mediation-related services.

**Rule 3. Presiding Mediator.** A foreclosure mediation may be conducted by either a senior judge, Supreme Court settlement conference judge, or other person designated by the Supreme Court.

1. *Assignment of presiding mediator.* No later than 10 days after receipt of notification of an election for foreclosure mediation, as provided in Rule 5(4)(b), the Administrator or designee shall randomly select and assign from the applicable geographic area a mediator to preside over the mediation. The Administrator shall notify the selected mediator and the parties to the mediation of the mediator's appointment. The assigned mediator will have 2 days after receiving the assignment to determine and notify the Administrator of a conflict requiring his or her recusal. Upon such notification, the Administrator shall immediately and

randomly select another mediator to conduct the mediation. The Administrator may direct a mediator to cluster several mediations for a lender.

2. *Panel of mediators.* The Administrator shall maintain a list of mediators by geographic area available to hear foreclosure mediations. The list shall include all senior judges, Supreme Court settlement conference judges, and other designees who are appointed by the Court to serve as presiding mediators in the Foreclosure Mediation Program and are qualified pursuant to subsection 3.

3. *Mediator qualifications.*

(a) Mediators must meet the following minimum qualifications:

(1) Be authorized to practice law in the State of Nevada; or

(2) Be an experienced mediator. For purposes of subsection 3, an experienced mediator shall mean an individual who has participated in a mediation training program consisting of at least 40 hours of classroom and role playing and has conducted 10 mediations as a co-mediator or sole mediator.

(b) Additionally, all mediators must participate in a training program of at least 4 hours consisting of education in mortgages, deeds of trust, promissory notes, loan modifications, Nevada foreclosure laws, and such other topics as determined necessary by the Court.

(c) The Court, for good cause shown, may waive the minimum requirements set forth herein.

4. *Appointment of mediators.*

(a) The Administrator, or designee, shall solicit and provide the Court with the names and qualifications of persons who have applied to become mediators. The Court shall review the qualifications and approve, deny, or continue the applicant's request to serve as a mediator. The term of appointment shall be 1 year.

(b) The Administrator shall receive all affidavits and issue all certificates as may be required herein. The list of court-approved mediators shall be maintained by the Administrator.

5. *Authority.* The presiding mediator shall have all requisite authority to conduct a foreclosure mediation. The mediator shall timely schedule a mediation and notify the Administrator of the outcome of each mediation.

#### **Rule 4. Conduct, Disqualification, and Recusal.**

1. Any mediator appointed pursuant to these rules is subject to the Nevada Code of Judicial Conduct as adopted or amended by the Supreme Court of Nevada.

2. A mediator who would be disqualified for any reason that would disqualify a judge under the Nevada Code of Judicial Conduct shall immediately recuse himself or herself as a mediator in the particular case.

## II. PARTICIPATION IN THE FORECLOSURE MEDIATION PROGRAM

### Rule 5. Eligibility for the Foreclosure Mediation Program.

1. The program applies to any grantor or person who holds the title of record and is the owner-occupant of a residence as to which a notice of default and election to sell has been recorded on or after July 1, 2009.

2. Owner-occupied housing means housing that is occupied by an owner as his or her primary residence. This term does not include any time-share or other property regulated under NRS Chapter 119A.

3. All grantors or persons who hold the title of record who have timely elected to participate in the program may do so and are herein referenced as the eligible participants, except where:

(a) The grantor or the person who holds title of record has previously surrendered the real property that is the subject of the foreclosure proceedings, as evidenced by a letter signed by the grantor or the person who holds title of record confirming the surrender or delivery of the keys to the property to the trustee, the beneficiary of the deed of trust, or the mortgagee, or an authorized agent of any of these recipients; or

(b) A petition in bankruptcy under Chapters 7, 11, 12, or 13 of Title 11 of the United States Code has been filed with respect to the grantor or the person who holds title of record on or after July 1, 2009, and the bankruptcy court has not entered an order closing or dismissing the case, or granting relief from the automatic stay of the foreclosure.

4. The mediation process under these rules shall be initiated by the preparation and delivery of an Election of Mediation by a grantor or person who holds title of record of an owner-occupied residence on a form provided by the Administrator and payment of the fee required by Rule 14 herein.

(a) The eligible participant shall, not later than 30 days after the service upon him or her in the manner required by NRS 107.080 of the notice of default and election to sell, complete the Election/Waiver of Mediation Form and deliver the form to the trustee, by certified mail, return receipt requested. The eligible participant shall also mail a copy of the Election/Waiver of Mediation to the Administrator.

(b) The trustee shall, within 10 days of the receipt of the Election of Mediation, deposit with the Administrator a Consent to Mediation on a form provided by the Administrator, together with the fees required in Rule 14 herein. Any delay by the trustee in notifying the Administrator of an Election of Mediation shall extend the time for mediation set forth in Rule 1(2).

5. Failure by any eligible participant to timely deliver an Election of Mediation to the trustee or to attend and participate at a mediation scheduled under these rules shall result in the Administrator issuing a certificate stating no mediation is required.

6. All beneficiaries of a deed of trust sought to be foreclosed against an eligible participant who has timely delivered an Election of Mediation shall

participate in the Foreclosure Mediation Program, be represented at all times during a mediation by a person or persons who have the authority to modify the loan secured by the deed of trust sought to be foreclosed, and bring to the mediation the original or a certified copy of the deed of trust, the mortgage note, and each assignment of the deed of trust and the mortgage note.

(a) The eligible participant and lender representatives with authority to modify the underlying loan shall be physically present or, if approved by the mediator for good cause shown, may participate in the mediation by phone.

(b) Unless extended by the presiding mediator, the mediation shall be conducted within 90 days of the recording of the notice of default and election to sell. Upon the completion of the mediation, the mediator shall prepare the Mediator's Statement in accordance with Rule 12 herein.

(c) For purposes of this rule, a certified copy of the original mortgage note, deed of trust, and each assignment of the deed of trust and mortgage note is only satisfied when the mediator receives a statement under oath signed before a notary public that must include:

(1) The name, address, capacity, and authority of the person making the certification;

(2) The person making the certification is in actual possession of the original mortgage note, deed of trust, and each assignment of the mortgage note and deed of trust; and

(3) The attached copy of the mortgage note, deed of trust, and each assignment of the mortgage note and deed of trust are a true and correct copy of the original mortgage note, deed of trust, and assignment of the deed of trust in the possession of the person making the certification.

(d) In the event of the loss or destruction of the original mortgage note, deed of trust, or assignment of the mortgage note or deed of trust, the mediator shall recognize a judicial order entered pursuant to NRS 104.3309 providing for the enforcement of a lost, destroyed, or stolen instrument.

(e) A party to the mediation may file a petition for judicial review with the district court in the county where the notice of default was properly recorded seeking a determination of bad faith participation and sanctions pursuant to NRS Chapter 107 as amended. All such petitions shall be reviewed by the district court in accordance with the Nevada Rules of Civil Procedure and NRS Chapter 107.

**Rule 6. Option for Inclusion.** For any owner-occupied property located in Nevada where a Notice of Default is recorded prior to July 1, 2009, the grantor or person who holds the title of record (eligible participant) and the beneficiary of the deed of trust may agree in writing to enter the Foreclosure Mediation Program governed by NRS Chapter 107 and these rules. Notice and a copy of the agreement must be provided to the Administrator. Subject to the approval of the Administrator, the mediation process shall be conducted with the appointment of a mediator within 10 days of the Administrator's acceptance of the parties agreement to mediate.

### III. MEDIATION PROCEDURES

**Rule 7. Documents to Be Presented for the Mediation.** In addition to the documents set forth in Rule 5, the parties shall prepare such papers and provide to the mediator, and exchange the items required to be exchanged, using the most expeditious method available, at least 7 days prior to the mediation, and such other documents or estimates as the mediator may later direct, but which at a minimum shall include the following:

1. The homeowner shall prepare a Financial Statement and Housing Affordability Worksheet to include the information set forth in forms provided by the Administrator.

2. The beneficiary of the deed of trust or its representative shall produce the most current and appropriate appraisals that it has with respect to the real property that is the subject of the notice of default and shall prepare an estimate of the "short sale" value of the residence that it may be willing to consider as a part of the negotiation if loan modification is not agreed upon.

3. Both parties to the mediation shall prepare and submit to the mediator under confidential cover a nonbinding proposal for resolving the foreclosure. Additionally, the beneficiary of the deed of trust shall, under confidential cover, provide to the mediator the evaluative methodology used in determining the eligibility or noneligibility of the grantor or the person who holds the title of record for a loan modification.

**Rule 8. Settlement Before Mediation.** In the event the foreclosure issues are resolved before the scheduled mediation, the parties must, no later than 2 days prior to the scheduled mediation date, advise the mediator of their settlement. Any settlement will not result in the refund of fees.

**Rule 9. Calendaring.** Unless otherwise stipulated by the parties and approved by the presiding mediator, or for good cause shown, a mediation will be calendared to commence no later than 10 days prior to the 90th day following the service of the notice of default, pursuant to NRS 107.080.

**Rule 10. Continuances.** No request for a continuance of a mediation scheduled in the Foreclosure Mediation Program may be granted, except upon a showing of extraordinary circumstances. A motion for a continuance must be in writing, served on the presiding mediator and opposing party, and set forth the extraordinary circumstances with particularity. A ruling by the presiding mediator granting a continuance must state the nature of the extraordinary circumstances and provide at least 3 dates within the ensuing 10 days when the parties can conduct the mediation. The presiding mediator will then calendar the case for

mediation on one of the specified dates. Conflicts in the schedule of counsel shall not constitute extraordinary circumstances.

**Rule 11. Location of Mediation.** The presiding mediator shall designate the location, time, and place for the mediation in coordination with the parties and shall notify the Administrator of the same. Upon request from the presiding mediator, the Administrator shall assist in designating a location for the mediation.

**Rule 12. Time Limits and Mediator's Statement.**

1. Unless extended by the presiding mediator, the parties will be allowed a total of 4 hours to present and conclude the mediation.

2. Within 10 days after the conclusion of the mediation, the mediator must file with the Administrator and serve on all parties a copy of the Mediator's Statement on a form provided by the Administrator.

**Rule 13. Interpreter Services.** Any party requiring interpreter services is responsible for contacting, scheduling, and insuring an interpreter is present for the mediation. The interpreter's compensation is the responsibility of the party requesting the service. The Administrator shall maintain a list of interpreters qualified to interpret in mediations. The list must be made available to the presiding mediator and parties.

**Rule 14. Fees for Presiding Mediators.** Mediators shall be compensated in the amount of \$400, paid equally by the parties unless otherwise stipulated. Each party must pay its respective fee (\$200) at the entry point into the Foreclosure Mediation Program. Payment must occur by cashier check, money order, or, when available, electronic payment. The payment is nonrefundable.

**Rule 15. Deposits; Failure to Pay.** If a party to a mediation fails to pay the \$200 toward the mediator's fee, the mediation may be terminated and relief awarded to the nondefaulting party, as may be deemed appropriate.

**Rule 16. Confidentiality.** All documents and discussions presented during the mediation shall be deemed confidential and, except in an action to review a petition for judicial review for sanctions under these rules, shall be presumed to be inadmissible in any subsequent actions or proceedings. Nothing contained herein shall prevent the disclosure of such limited information by the mediator or parties as required by NRS Chapter 107.

search...

# Nevada Judiciary

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- [Foreclosure Mediation](#)

The Foreclosure Mediation Program was established as a result of the Assembly Bill 149, passed during the 2009 session of the Nevada Legislature. Its purpose is to address the foreclosure crisis head-on and to help keep Nevada families in their homes.

This law establishes a Foreclosure Mediation Program for owner-occupied residential properties that are subject to foreclosure notices – formally known as a *Notice of Default and Election to Sell* – filed on or after July 1, 2009.

**Mediation is an alternative method to help parties resolve disputes by agreement with the help of trained mediators.**



Tuesday, 30 June 2009 16:38

The Nevada Supreme Court has adopted formal rules governing the Nevada Foreclosure Mediation Program that was established by the passage of Assembly Bill 149 by the 2009 Nevada Legislature. [CLICK HERE](#) to read the rules.

The creation of the Nevada Foreclosure Mediation Program has also resulted in a new recording fee for Notices of Default and Election to Sell. The new fee, established by Assembly Bill 65, is \$50.

On this website is an information brochure announcing the new recording fee for the Notice of Default ([CLICK HERE](#)). The Election/Waiver of Mediation Form to be served with the Notice of Default and Election to Sell is included along with instructions for the individuals recording the notices involved in the new foreclosure procedures ([CLICK HERE](#)).

Assembly Bill 149, passed shortly before the end of the session, provides for mediations in foreclosures commenced on or after July 1, 2009, as a way to help home owners find alternatives to losing their houses.

A homeowner who receives a foreclosure notice can request an opportunity to sit down with the lenders and a trained mediator and explore whether a mutually agreeable resolution can be reached.

In the legislation, the Supreme Court was tasked with establishing the rules under which the Foreclosure Mediation Program will function.

Last Updated on Thursday, 02 July 2009 13:11

[Nevada Foreclosure Mediation Program Administrator is Hired](#)



Monday, 29 June 2009 07:31

## Mediation Supervisor Also Hired

Nevada Supreme Court Chief Justice James W. Hardesty has announced that Verise Campbell has been hired as the Nevada Foreclosure Mediation Program Administrator to oversee the legislatively-created project.

Last Updated on Thursday, 02 July 2009 13:41

[Read more...](#)

[Listen to the Supreme Court's Two Public Hearing on Foreclosure Mediation Rules](#)



Podcasts (audio files) are now available of the Nevada Supreme Court's two public hearings about the proposed rules for the Foreclosure Mediation Program created by the Nevada Legislature. The first hearing was held June 16 in the Supreme Court's Carson City courtroom. The second hearing was held June 26 in the Supreme Court's Las Vegas courtroom. Podcasts may be downloaded for listening.

[CLICK HERE](#) to access the podcast of the Supreme Court's June 26 public hearing in Las Vegas.

[CLICK HERE](#) to access the podcast of the Supreme Court's June 16 public hearing in Carson City.

**Foreclosure Mediation Documents & Forms:**



[Download About the Nevada Foreclosure Mediation Program](#)

File Title: About the Nevada Foreclosure Mediation Program  
 File Type: doc  
 File Size: 31.50 Kb  
 Downloads: 1141



[Download Order Setting Public Hearing on Draft Rules](#)

File Title: Order Setting Public Hearing on Draft Rules  
 File Type: pdf  
 File Size: 89.57 Kb  
 Downloads: 289



[Download Apply to be a Mediator](#)

File Title: Apply to be a Mediator  
 File Type: pdf  
 File Size: 353.48 Kb  
 Downloads: 1561

**Contact Information:**

Foreclosure Mediation Administrator  
 Phone - 775-687-9816  
 Email - [foreclose@nvcourts.nv.gov](mailto:foreclose@nvcourts.nv.gov)

200 Lewis St., 17th Floor  
 Las Vegas, NV 89101

Last Updated on Tuesday, 30 June 2009 16:40

[Nevada Supreme Court Adopts Rules For Foreclosure Mediation Program](#)

The Nevada Supreme Court has adopted formal rules governing the Nevada Foreclosure Mediation Program that was established by the passage of Assembly Bill 149 by the 2009 Nevada Legislature. [CLICK HERE](#) to read the rules.



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In the legislation, the Supreme Court was tasked with establishing the rules under which the Foreclosure Mediation Program will function.

## Foreclosure

- [About Foreclosure Mediation](#)
- [Documents and Forms](#)
- [Foreclosure FAQs](#)
- [Do You Want to be a Mediator?](#)

[ADKT 435 Order Citing Public Hearing on Draft Rules](#)

[Order Setting Public Hearing on Draft Rules](#)

[About the Nevada Foreclosure Mediation Program](#)

[Apply to be a Mediator](#)

[Trustee Brochure](#)

[Form to Request Mediation \(Instructions included\)](#)

[Order Adopting Foreclosure Mediation Rules](#)

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Revised: July 7, 2009

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[Committees and Commissions](#)



**TAB 6**

**000161**



**MEMORANDUM**

From: Kristina Marzec  
To: Access to Justice Commission  
Date: July 8, 2009  
Re: 2009 Calendar to date



**Quarterly Commission Meetings 2009:**

**October 9, 2009      1-5**

Please note 2010 calendar will be set at this meeting. Bring your blackberries/calendars please.

<i>Las Vegas</i> AOC Conference Room, 17 <sup>th</sup> Floor Regional Justice Center 200 Lewis Ave., Las Vegas, 89101	<i>Carson City</i> AOC Conference Room, 2 <sup>nd</sup> Floor Supreme Court Building 201 S. Carson Street, Carson City, 89701	<i>NEW- Reno</i> AOC Conference Room, 2 <sup>nd</sup> Floor, #215 2 <sup>nd</sup> Judicial District Court 75 Court Street, Reno, 89501
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Conference Call info: 1-866-210-7083 1043736#  
AOC Main number: 775-684-1700

**Committee Conference Call Meetings:**

July 22, 2009      3 pm      Statewide awards planning 2010  
July 24, 2009      3pm      Tentative- Rural Services Delivery  
July 28, 2009      11 am      Legal Services Delivery/National Pro Bono week  
July 30, 2009      3 pm      Communications  
August 26, 2009      11 am      Development

**Next State Bar Board of Governors Meeting**

August 19, 2009      Fallon, Nevada

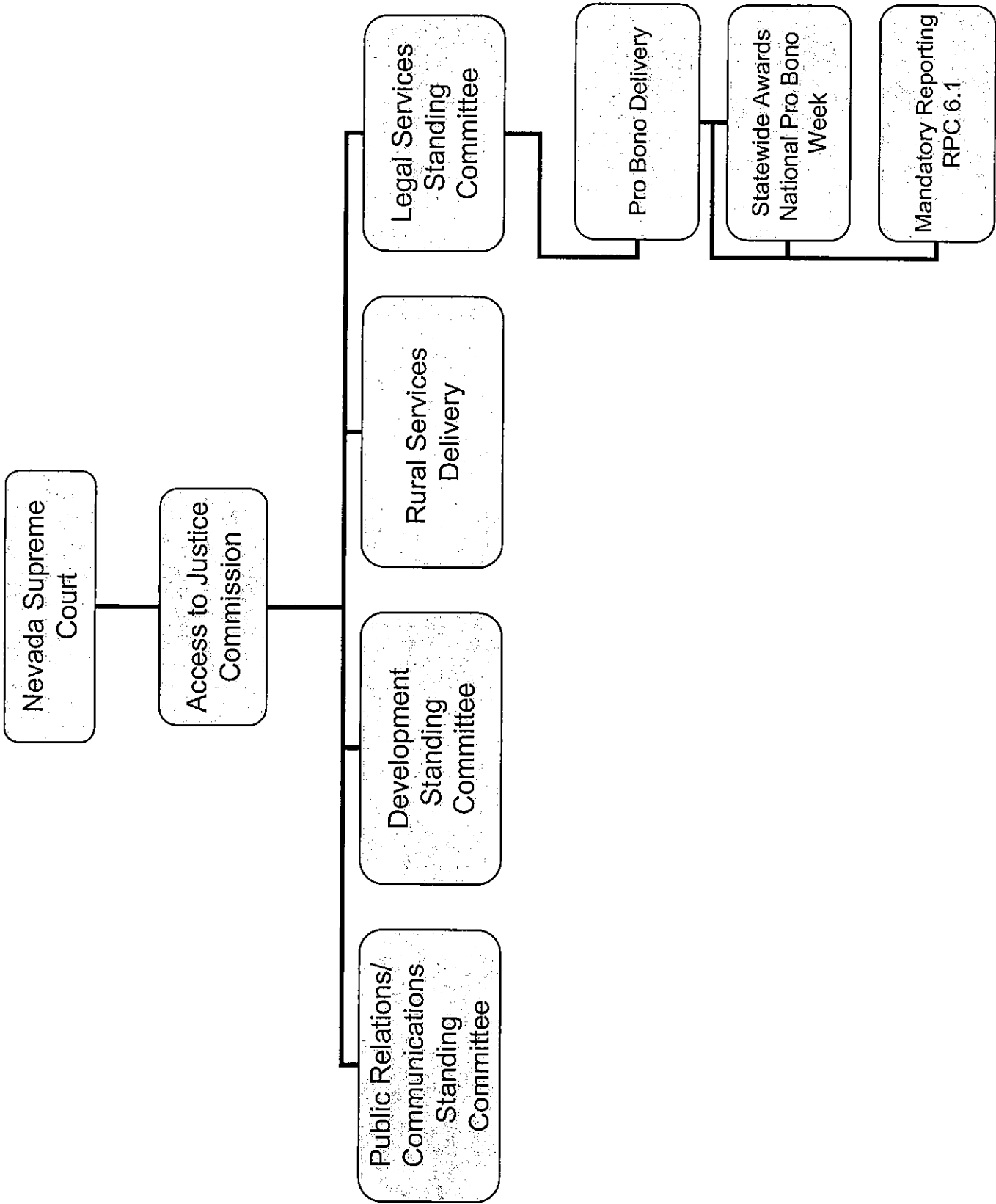
**National Pro Bono Week**

October 25-31

## Access to Justice Commission

July 2009

Last	First	Title	Position	Rule Slot	SCR 15§	Email
Abbott	Kimberly		Pro Bono Project Director	Legal Aid Center of Southern Nevada	2(e)	kabbott@lacsni.org
Bradshaw	James			State Bar Board of Governors	2(f)	jbradshaw@Mcdonaldcarano.com
Cooney	Valerie		Executive Director	Volunteer Attorneys for Rural Nevadans	2(e)	vcooney@vvarn.org
Desmond	John			Washoe County Bar	2(f)	jpd@jonesvargas.com
Doherty	Frances	Hon.		Second Judicial District Court/ Family Court	2(a)	frances.doherty@washoecourts.us
Douglas	Michael	Justice	Commission Co-Chair	Supreme Court of Nevada	2	mdouglas@nvcourts.nv.gov
Elcano	Paul		Executive Director	Washoe Legal Services	2(e)	pelcano@ashoelegalservices.org
Goff	Betsy	Hon.		Eighth Judicial District Court	2(a)	GonzalezE@clarkcountycourts.us
Gonzalez	James	Chief Justice	Commission Co-Chair	Supreme Court of Nevada	2	jhardesty@nvcourts.nv.gov
Johnson	Anna Marie		Executive Director	Nevada Legal Services	2(e)	ajohnson@nslaw.net
Kandt	W. Brett			Office of the Attorney General	2(d)	bkandt@ag.nv.gov
Nielsen	Ernest			Washoe Co. Senior Law Project	2(e)	enielsen@washoecounty.us
Puccinelli	Andrew	Hon.		Fourth Judicial District Court/Rural rep	2(b)	apuccinelli@elkocountynv.net
Thronson	David	Professor		UNLV Boyd Law School	2(g)	David.thronson@unlv.edu
Vogel	Sheri Cane		Executive Director	Senior Citizens Law Project	2(e)	svogel@lasvegasnevada.gov
Warden	Tom		Vice President, Community Relations The Howard Hughes Corporation	Layperson 1	2(h)	twarden@ggp.com
Steinheimer	Connie	Hon.		Defunct slot-Washoe Access to Justice Foundation	2(e)	judge.steinheimer@washoecourt.us
Vacant				Defunct slot-Eight Judicial Pro Bono Foundation	2(e)	
Vacant				Clark County Bar	2(f)	
Vacant				Limited Jurisdiction Judge, Liaison to Nevada Judges Association 15(2)(c)	2(c)	
Vacant				Layperson 2	2(h)	
Marzec	Kristina		Commission Ex. Dir.	Staff	2	kristinam@nvbar.org





**NEVADA SUPREME COURT  
ACCESS TO JUSTICE COMMISSION**

The Supreme Court Access to Justice Commission is seeking lawyers to participate on Committees which are part of this Commission. Participation will be by appointment only. AJC is seeking lawyers who have the time and interest in the work of the AJC. No prior experience working on a local or state committee is required. The AJC requires an eagerness to help those less fortunate in Nevada get access to the courts and the legal system.

The AJC was created to:

- 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.

Under SCR 15, the Access to Justice Commission directly creates and appoints its committees. At present, there is no minimum or maximum membership and appointments are made as deemed necessary and proper. The Co-Chairs, Chief Justice Hardesty and Justice Michael Douglas, have deemed expansion of all Committees to be appropriate at this time and therefore will be making appointments in the next quarter. The Commission may also add new Committees and/or working groups, and consider expansion of the Commission itself, in future.

<b>Communications</b>	<b>Development</b>	<b>Legal Services Delivery</b>	<b>Rural Services Delivery</b>
<b>Focus</b>			
marketing and communication of Commission programs and initiatives to the membership and the public where appropriate	develop viability of funding for new programs, or identify potential sources of future funding from existing sources for Commission initiatives and programs	state-wide delivery of civil legal services, recognition programs for pro bono programs and attorneys, and outreach to the legal community on emergent issues. This Committee is generally intended for legal services professionals currently involved in part of the continuum of care for civil legal aid in Nevada.	New committee, Feb 2009. Anticipated focus will be on the provision of legal services to rural communities, with emphasis on technology-based solutions and increased pro bono lawyer participation. This group will work closely with the existing AOC Rural Court Technology project.
<b>Current projects</b>			
Needs Assessment Marketing; Public Interest Lecture Series; Recruitment and Retention; Mandatory Reporting; Website expansion	Loan Assistance LRAP; Division of Aging Funding concerns; Court Posted Fees ; Real Estate Escrow Funds; Recruitment/Retention; Fellowship; Cy Pres	Pro Bono Recognition National Pro Bono Week; mandatory reporting; Statewide Award; Emeritus; Self Help; Standardized Forms; Standardized Reporting (provider statistics); Law Firm initiatives	t/b/d

**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.

[Added; effective June 15, 2006.]

**NEVADA SUPREME COURT ACCESS TO JUSTICE**  
**STANDING COMMITTEES**  
Updated 4.2009

**RURAL SERVICES DELIVERY** *est. April 2009*

**Justice Douglas**  
**Amber Candelaria**  
**Valerie Cooney**  
Judge Dahl  
Judge Davis  
Judge Dory  
Judge Fletcher  
Anne Heck (AOC)  
**Anna Johnson**  
Judge Lane  
Judge Maslach  
John McCormick (AOC)  
Sheryl Overstreet (AOC)  
Judge Papez  
**Judge Puccinelli**  
Judge Wagner  
Judge Wambolt

**COMMUNICATIONS**

Needs Assessment Marketing  
Public Interest Lecture Series  
Recruitment and Retention  
    LRAP- Development  
    Fellowships- LSD  
    Benefits and Salaries- LSD  
Mandatory Reporting  
Website

**David Thronson**  
**Judge Gonzalez**  
**Kimberly Abbott**  
**Brett Kandt**  
**Judge Doherty**  
Christine Smith  
William Heavilin  
Trevor Hayes

**Scott Roedder- ex officio**

**DEVELOPMENT**

IOLTA comparability/minimum standards  
LRAP  
Recruitment/Retention  
    2009 Fellowship- Thronson  
    LRAP- work group Lynn, Anna, Valerie  
    Retirement/benefits/salaries- Paul

Deferred to 2010:  
    Cy Pres-Paul  
    Division of Aging Funding concerns  
    Court Posted Fees  
    Nye County  
    Real Estate Escrow Funds

**Ernie Nielsen**  
**Paul Eicano**  
**Valerie Cooney**



Nancy Becker  
**Anna Johnson**  
**Cam Ferenbach**  
**Tom Warden**  
Lynn Etkins  
Suzy Baucum  
David Thronson

### LEGAL SERVICES DELIVERY

Pro Bono Recognition  
  Pro Bono Week- also with Communications  
  State Wide Award- Renee  
  Nevada Lawyer  
Emeritus- Kimberly  
Self Help  
  Standardized Forms-Justice Douglas, Chair, Supreme Court Library Commission  
  Hotlines, continuum of care issues  
Standardized Reporting (provider statistics)  
Law Firm initiatives

**Paul Elcano (ED)**  
**Sugar Vogel (ED)**  
**John Desmond**  
**Kimberly Abbott**  
**Judge Steinheimer**  
**AnnaMarie Johnson (ED)**  
**Ernie Nielsen (ED)-Chair**  
**Valerie Cooney (ED)**  
**Judge Puccinelli**  
Barbara Buckley (ED)  
Lynn Etkins  
Odessa Ramirez  
Renee Kelly  
Christopher Reade  
Amber Candelaria

### FUND DISTRIBUTION

TBD

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



## 2009 PROGRAMS AND PROJECTS ACCESS TO JUSTICE COMMISSION

*Updated 6.2009*

- **501 (C) 3. ON HOLD indefinitely**
  - If reinstated, develop conflict policy and scope of lobbying/legislative activities
- **ATJC PR & Marketing**
- **Attorney recognition programs**
  - Statewide awards, State Bar Annual Convention
  - National Pro Bono Week October 21, 2009. Plan state-wide events.
- **Court posted fees**
- **Cy Pres funding**
- **Emeritus Attorney Program.** Providers to develop working program and work with Director to implement operating rules and develop comprehensive plan to solicit participation. Tap eligible out of state attorney resources.
- **IOLTA Comparability.** Negotiate with banks to join preferred list. Recommend potential rule changes to enforce comparability through amendment to SCRs (likely 217). Expand marketing plan.
- **Law firm initiatives**
  - Follow through with large law firms, responders and non-responders
  - Identify future plan for medium and small firm meetings
- **Lawyer recruitment and Retention**
  - Loan repayment assistance program
  - Fellowships
  - Retirement/benefits/salary enhancement
  - Public Interest Lecture Series. Define goals and objectives of the series
- **Legal Needs Assessment**
  - Marketing plan development and roll-out
- **NLF and the ATJC.** Continue to expand relationship between NLF and the ATJC as potential investment and/or fundraising arm
- **Rule changes (potential)**
  - IOLTA Comparability
  - Amendments to RPC 6.1 and mandatory reporting
  - SCR 15- Composition of the ATJC
  - NLF as fundraising and investment arm of the Commission
  - Unbundled legal services (potential state-wide rule)
- **Rural legal services delivery**
  - Establish goals and work groups
- **Self-Help initiatives**
  - Participate in RJC Self-help roll-out
  - Standardized Forms: Coordinate with Supreme Court Library Commission
- **Statewide fundraising.**
- **Uniform Reporting.** Develop a standardized reporting system for legal services provider statistics
- **Website.** Develop [nevadalawhelp.org](http://nevadalawhelp.org)

**TAB 7**

**000170**

**NEVADA LEGAL SERVICES'  
2009 OUTREACH SCHEDULE**

**Senior Centers - January**

<u>Date</u>	<u>Location</u>
1/14/09	Overton, Nevada Jim Boyles Senior Center
1/14/09	Mesquite, Nevada Mesquite Senior Center
1/21/09	Alamo, Nevada Alamo Senior Center
1/21/09	Caliente, Nevada Olsen Senior Center
1/21/09	Ely, Nevada White Pine Senior Center
1/22/09	Elko, Nevada Elko Senior Center
1/23/09	Winnemucca, Nevada Winnemucca Senior Center
1/23/09	Fernley, Nevada Fernley Senior Center
1/26/09	Carson City, Nevada Carson City Senior Center
	Gardnerville, Nevada Douglas County Senior Center
1/26/09	Yerington, Nevada Yerington Senior Center
1/27/09	Fallon, Nevada Churchill County Senior Center
1/27/09	Hawthorne, Nevada Mineral County Care and Share
1/27/09	Pahrump, Nevada Pahrump Valley Senior Center

## February

2/11/09 Mesquite, Nevada  
Mesquite Senior Center

2/12/09 Ely, Nevada  
White Pine Senior Center

2/12/09 Eureka, Nevada  
Eureka Senior Center

2/13/09 Austin, Nevada  
Austin Senior Center

2/17/09 Carson City, Nevada  
Carson City Senior Center

Gardnerville, Nevada  
Douglas County Senior Center

2/18/09 Tonopah, Nevada  
Tonopah Senior Center

2/18/09 Laughlin, Nevada  
Laughlin Senior Center

2/18/09 Searchlight, Nevada  
Searchlight Senior Center

2/25/09 Pahrump, Nevada  
Pahrump Valley Senior Center

## March

3/11/09 Mesquite, Nevada  
Mesquite Senior Center

3/13/09 Amargosa, Nevada  
Senior Center

3/16/09 Carson City, Nevada  
Carson Senior Center

3/17/09 Carson City, Nevada  
Carson Senior Center

Gardnerville, Nevada

Douglas County Senior Center

- 3/18/09 Austin, Nevada  
Austin Senior Center
- 3/18/09 Eureka, Nevada  
Eureka Senior Center
- 3/19/09 Hawthorne, Nevada  
County Care & Share
- 3/19/09 Tonopah, Nevada  
Tonopah Senior Center
- 3/25/09 Pahrump, Nevada  
Pahrump Valley Senior Center
- 3/25/09 Las Vegas, Nevada  
Veteran's Stand Down

**April**

- 4/8/09 Mesquite, Nevada  
Mesquite Senior Center
- 4/13/09 Ely, Nevada  
White Pine Senior Center
- 4/14/09 Wells, Nevada  
Wells Senior Center
- 4/15/09 Carlin, Nevada  
Carlin Senior Center
- 4/15/09 Fallon, Nevada  
Fallon Senior Center
- 4/16/09 Carson City, Nevada  
Carson Senior Center
- Gardnerville, Nevada  
Douglas County Senior Center
- 4/29/09 Pahrump, Nevada  
Pahrump Senior Center

In addition to the Senior Centers, Nevada Legal Services has conducted outreach the last Wednesday of each month at the NOTO Resource Center in Pahrump and the third Wednesday of each month at the Family Resource Center in Fallon.

The following is the regularly scheduled outreach that will take place for the rest of the year:

Mesquite Senior Center  
Second Wednesday Every Month

Pahrump Senior Center  
Last Wednesday of Every Month

Pahrump NOTO Resource Center  
Last Wednesday of Every Month

Ely Senior Center  
Once Every Month-Schedule Determined by Senior Center

Elko Senior Center  
Once Every Month – Schedule Determined by Senior Center

Carson City Senior Center  
Once Every Month-Schedule Determined by Senior Center

Tonopah Senior Center  
Once Every Two Months-Schedule Determined by Senior Center

Fallon Family Resource Center  
Third Wednesday of Every Month

Douglas County Senior Center  
Fourth Tuesday of Every Month

All other outreach is conducted as requested by the community organizations. NLS continually contacts various organizations in the rural counties, letting them know we would be happy to come out and conduct outreach.





**STATE BAR OF NEVADA**  
**STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY**

**Formal Opinion No. 34<sup>1</sup>**

*Originally issued on 12/11/06; revised on 6/24/09*

**QUESTIONS**

1. What is “ghost-lawyering”?
2. Is “ghost-lawyering” an **acceptable** practice?
3. What is the remedy for the appearing attorney when it is discovered or suspected that an ostensible *pro se* party is being assisted by a “ghost-lawyer”?
4. What are the ethical obligations of the appearing attorney in communicating with an ostensible *pro se* party being assisted by a “ghost-lawyer”?
5. What about “ghost-lawyering” in a non-litigation setting?

**ANSWERS**

1. “*Ghost-lawyering*” occurs when a member of the bar gives **substantial** legal assistance, by drafting or otherwise, to a party ostensibly appearing *pro se*, with the lawyer’s actual or constructive knowledge that the legal assistance will not be disclosed to the court.
2. “*Ghost-lawyering*” is **unethical unless** the “ghost-lawyer’s” assistance and identity are disclosed to the court by the signature of the “ghost-lawyer” under Rule 11 upon every paper filed with the court for which the “ghost-lawyer” gave “substantial assistance” to the *pro se* litigant by drafting or otherwise.
3. An appearing attorney’s remedy upon the suspicion or discovery that a party ostensibly appearing *pro se* is aided by a “ghost-lawyer”, is to move the court to exercise its discretion: (A) to require the *pro se* litigant to disclose whether the litigant is being assisted by a “ghost-lawyer”; (B) if so, to require the *pro se* litigant to disclose the

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<sup>1</sup> This opinion is issued by the Standing Committee on Ethics and Professional Responsibility of the State Bar of Nevada, pursuant to S.C.R. 225. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, its board of governors, any persons or tribunals charged with regulatory responsibilities, or any member of the state bar.

identity of the “ghost-lawyer”; and (C) to require the “ghost-lawyer” to appear and sign all pleadings, motions and briefs in which the “ghost-lawyer” assisted.

4. *An appearing attorney’s obligation, when dealing with an ostensibly pro se litigant assisted by a “ghost-lawyer”, is to consider the pro se litigant “unrepresented” for purposes of the Rules of Professional Conduct. That has at least two consequences: (1) the appearing attorney’s communication with the pro se litigant is not an ex parte communication prohibited by Rule 4.2; and (2) the communicating attorney must comply with Rule 4.3 governing communications with “unrepresented” persons.*

5. *“Ghost-lawyering” in non-litigation settings:*

a. A member of the bar is engaging in “ghost-lawyering” in the non-litigation setting if the lawyer gives “substantial” legal assistance, by drafting or otherwise, to a party ostensibly not assisted, with the lawyer’s actual or constructive knowledge that the legal assistance will be anonymously presented to the other attorney in the transaction by the ostensibly unassisted party; and

b. “Ghost-lawyering” is an unethical practice in the non-litigation setting, unless: (A) the “ghost-lawyer’s” assistance and identity are disclosed in writing to the other attorney in the transaction; and (B) the disclosure notifies the other attorney whether that attorney must communicate about the transaction with the “ghost-lawyer” or the unrepresented party, or either, or both.

#### AUTHORITIES RELIED ON

Nevada Supreme Court Rule 46;  
Nevada Rules of Professional Conduct 1.2, 1.16, 3.3, 4.2, 4.3 & 8.4;  
*In re Mungo*, 305 B.R. 762 (D.C. S.C. 2003);  
*Chudasma v. Mazda Motor Corporation*, 1995 WL 6411984 (D.C. GA. 1995);  
ABA Informal Opinion 1414 (June 6, 1978);  
ABA Formal Opinion 07-446 (May 5, 2007);  
*Ricotta v. State of California*, 4 F.Supp.2d 961 (D.C. CA. 1998);  
Oklahoma Bar Ethics Opinion 2001-4 (2001);  
State Bar of New York Committee on Professional Ethics Opinion No. 613  
(September 24, 1990);  
Los Angeles County Bar Association Professional Responsibility and Ethics  
Committee Ethics Opinion 502 (November 4, 1999);  
23 Los Angeles Lawyer (September, 2000);  
Jona Goldschmidt, “*In Defense of Ghostwriting*”, Fordham Urban Law Journal

(February, 2002);  
Adams, "'Unbundled Legal Services': A Solution to the Problems Caused by *Pro Se* Litigation in Massachusetts's Civil Courts", 40 New England Law Review 303 (Fall 2005);  
Rothermich, "Ethical and Procedural Implications of 'Ghost Writing' For *Pro Se* Litigants: Toward Increased Access to Civil Justice", 67 Fordham Law Review 2687 (April 1999);  
Los Angeles County Bar Association Professional Responsibility and Ethics Committee Ethics Opinion 502 (November 4, 1999);  
Alaska Ethics Opinion No. 93-1 (May 25, 1993);  
Arizona Bar Ethics Opinion 05-05 (May 2005);  
Iowa Ethics Opinion 94-35 (May 23, 1995);  
Massachusetts Ethics Opinion 98-1 (1998);  
*Duran v. Carris*, 238 F.3d 1268 (10<sup>th</sup> Cir. 2001);  
*Johnson v. Board of County Commissioners*, 868 F.Supp. 1226 (D.C. Colo. 1994);  
*Iowa Supreme Court Board of Professional Ethics and Conduct v. Lane*, 642 N.W.2d 296 (2002);  
Annotated Model Rules of Professional Conduct, 5<sup>th</sup> Ed., ABA (2003) at page 610;  
*Laremont-Lopez v. Southern Tidewater Opportunity Center*, 968 F.Supp. 1075 (D.C. VA. 1997);  
Florida Bar Ethics Opinion 79-7 (as revised 2-15-2000);  
Association of the Bar of the City of New York Formal Opinion 1987-2 (March 23, 1987);  
Connecticut Ethics Opinion 98-5 (January 30, 1998);  
Iowa Ethics Opinion 96-31 (June 5, 1997);  
*Ellis v. Maine*, 448 F.2d 1325 (1<sup>st</sup> Cir. 1971);  
*Wesley v. Don Stein Buick, Inc.*, 987 F.Supp 884 (D.C. Kan. 1997)

## DISCUSSION

### **Question No. 1: What is "Ghost-Lawyer"?**

"Ghost-writing" is defined as the practice of a member of the bar assisting a *pro se* litigant (without entering a formal appearance in the case as an attorney of record) by drafting, or guiding the drafting of, a substantial portion of the pleadings, motions, and briefs for the *pro se* litigant without signing them, and thus escaping the professional, ethical, and substantive obligations imposed on licensed attorneys. *In re Mungo*, 305 B.R. 762 (DC SC 2003); *Letter of Private Reprimand* No. 05-111-1865 issued by the Southern Nevada Disciplinary Board, *Nevada Lawyer*, August 2006 at p. 40.

This Opinion will refer to the broader term “ghost-lawyering” to refer to the practice of giving substantial legal assistance to a *pro se* party (without entering a formal appearance in the case as an attorney of record) which includes “ghost-writing”, but also includes substantial legal assistance beyond the drafting of papers to be submitted to the court. *Cf. Chudasma v. Mazda Motor Corporation*, 1995 WL 6411984 (D.C. Ga. 1995) at 29 & 31; ABA Informal Opinion 1414 (June 6, 1978). The question, then, is what legal assistance by a non-appearing attorney to an ostensible *pro se* litigant rises to the level of “substantial” assistance so as to amount to “ghost-lawyering”?

“Ghost-lawyering” does **not** include informally giving limited informal legal advice and assistance to family and friends. *In re Mungo*, 305 B.R. 762 (DC SC 2003); *Ricotta v. State of California*, 4 F.Supp.2d 961 (D.C. CA 1998); Oklahoma Bar Ethics Opinion 2001-4 (2001). Similarly, aid in completing a preprinted form is not substantial assistance within the meaning of this Opinion. Further, brief answers to telephone inquiries apprising persons of potential legal issues and rights does not constitute substantial legal assistance within the meaning of this opinion. Suggestions that a person seek legal assistance or referral to counsel is not ghost-lawyering. Likewise, baseline bar or government efforts to support *pro se* litigants and their self-help efforts are not ghost-lawyering.

In response to concerns raised by not-for-profit legal aid services providers regarding this advisory opinion, the State Bar of Nevada Office of Bar Counsel specifically recognizes the “practical necessity” exception to the unauthorized practice of law prohibition and related policies in assisting parties. “[T]he practical necessity apparently lies in a comparative lack of lawyers in the light of the volume of transactions of the type requiring the simple legal services. It is a situation where the legal profession is unable to provide the public with the simple services necessary to the transaction. *Pioneer Title Ins. & Trust Co. v. State Bar of Nev.*, 74 Nev. 186, 326 P.2d 408 (1958)(quot. *Lowell Bar Ass’n v. Loeb*, 315 Mass. 176, 52 N.E.2d 34 (1943)(“The actual practices of the community have an important bearing on the scope of the practice of law.”). In this context, “legal aid services providers” are bona fide 501(c)(3), government, or court-annexed programs such as Legal Aid Center of Southern Nevada, Nevada Legal Services, Inc., Washoe Legal Services, the Senior Citizen Law Projects, and Volunteer Attorneys for Rural Nevadans. This exception is based upon the nature of these programs as legitimate providers wholly dedicated to legal aid services, with trained staff under the supervision of licensed attorneys, and under the mandates to aid the poor as recognized by Supreme Court Rule 15 creating the Supreme Court Access to Justice Commission.

For attorneys not subject to this exception, the Committee adopts the rule that a licensed attorney crosses the line into “ghost-lawyering” when the lawyer gives substantial legal assistance, by drafting or otherwise, to a party ostensibly appearing *pro se*, with the lawyer’s actual or constructive knowledge that the legal assistance will not be disclosed to the court. *In re Mungo*, 305 B.R. 762 (D.C. S.C. 2003); *Ricotta v. State of California*, 4 F.Supp.2d 961 (D.C. CA 1998); State Bar of New York Committee on Professional Ethics Opinion No. 613 (September 24, 1990); Oklahoma Bar Ethics Opinion 2001-4 (2001).

## Question No. 2: Is “Ghost-Lawyering” Ethical?

There is currently a nationwide debate whether “ghost-lawyering” is ethical. Los Angeles County Bar Association Professional Responsibility and Ethics Committee Ethics Opinion 502 (November 4, 1999); 23 Los Angeles Lawyer (September, 2000).

The early court decisions expressing judicial disapproval of “ghost-writing” were not based on ethical considerations. Jona Goldschmidt, “*In Defense of Ghostwriting*”, Fordham Urban Law Journal (February 2002) at footnote 98–102. Then, in 1978 the ABA Standing Committee on Ethics and Professional Responsibility issued its Opinion 1414 (June 6, 1978)<sup>2</sup>. That Opinion concluded that it was an ethical violation of the Rule requiring candor to the court for a non-appearing attorney to give “extensive” advice to, or prepare a court document for, a *pro se* litigant. Today, there are differing views on the ethics of a non-appearing “ghost-lawyer”.

One view is that the client has the right to limit the scope of the legal services under Rule 1.2<sup>3</sup>, and the lawyer has the ethical right to provide “unbundled”<sup>4</sup> legal services to the client without appearing or disclosing the lawyer’s role or identity. Rothermich, “Ethical and Procedural Implications of ‘Ghost Writing’ For Pro Se Litigants:

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<sup>2</sup>Superseded by ABA Formal Opinion 07-446 (May 5, 2007).

<sup>3</sup>**Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer.**

...(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.”

<sup>4</sup>See, Adams, “‘Unbundled Legal Services’: A Solution to the Problems Caused by *Pro Se* Litigation in Massachusetts’s Civil Courts”, 40 New England Law Review 303 (Fall 2005); See, *Letter of Private Reprimand* No. 05-111-1865 issued by the Southern Nevada Disciplinary Board, *Nevada Lawyer*, August 2006

Toward Increased Access to Civil Justice”, 67 Fordham Law Review 2687 (April 1999); Goldschmidt, at footnote 120; Los Angeles County Bar Association Professional Responsibility and Ethics Committee Ethics Opinion 502 (November 4, 1999); 23 Los Angeles Lawyer (September, 2000) at footnote 8; Alaska Ethics Opinion No. 93-1 (May 25, 1993); Arizona Bar Ethics Opinion 05-05 (May 2005). This was the view adopted by the ABA Standing Committee on Ethics and Professional Responsibility in 2007. ABA Formal Opinion 07-446 (May 5, 2007).

A contrary view that it is unethical for a member of the bar to give “substantial” assistance to a *pro se* litigant without making a formal appearance in the case. *Ricotta v. State of California*, 4 F.Supp.2d 961 (D.C. CA 1998); ABA Informal Opinion 1414 (June 6, 1978) (using “extensive” assistance rather than “substantial”, but they appear the same); Rothermich, at footnote 118; Los Angeles County Bar Association Professional Responsibility and Ethics Committee Ethics Opinion 502 (November 4, 1999); 23 Los Angeles Lawyer (September, 2000) at footnote 8; Iowa Ethics Opinion 94-35 (May 23, 1995); Massachusetts Ethics Opinion 98-1 (1998). This view holds that “ghost-lawyering” by a non-appearing member of the bar for a party who is ostensibly appearing in an action *pro se*, is an unethical practice for several reasons:

1. It is an act of misrepresentation to the court that violates the attorney’s duty of candor to the court as required by Nevada Rule of Professional Conduct 3.3.<sup>5</sup> *In re Mungo*, 305 B.R. 762 (DC SC 2003); *Duran v. Carris*, 238 F.3d 1268 (10<sup>th</sup> Cir. 2001); *Johnson v. Board of County Commissioners*, 868 F.Supp. 1226 (D.C. Colo. 1994) (“Having a litigant appear to be *pro se* when in truth an attorney is authoring pleadings and necessarily guiding the course of the litigation with an unseen hand is ... far below the level of candor which must be met by members of the bar.”); *Iowa Supreme Court Board of Professional Ethics and Conduct v. Lane*, 642 N.W.2d 296 (2002); *Letter of Private Reprimand No. 05-111-1865* issued by the Southern Nevada Disciplinary Board, *Nevada Lawyer*, August 2006 at p. 40;

2. It is a violation of subsections (c) and (d) of Rule 8.4.<sup>6</sup> Massachusetts Ethics

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at p. 40.

<sup>5</sup>**Rule 3.3. Candor Toward the Tribunal.** (a) A lawyer shall not knowingly: (1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer...” Formerly SCR 172.

<sup>6</sup>**Rule 8.4. Misconduct.** It is professional misconduct for a lawyer to:

...(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

Opinion 98-1 (1998); Annotated Model Rules of Professional Conduct, 5<sup>th</sup> Ed., ABA (2003); Rothermich, at footnote 80;

3. It exploits the court's practice of holding *pro se* parties to a less stringent standard for pleadings than lawyers. *Laremont-Lopez v. Southern Tidewater Opportunity Center*, 968 F.Supp. 1075 (D.C. VA. 1997) (rejecting the lawyer's argument that the lawyer was employed for the limited purpose of drafting the Complaint and no longer represented the plaintiff); *In re Mungo*, 305 B.R. 762 (DC SC 2003); *Duran v. Carris*, 238 F.3d 1268 (10<sup>th</sup> Cir. 2001); *Johnson v. Board of County Commissioners*, 868 F.Supp. 1226 (D.C. Colo. 1994);

4. It effectively nullifies the certification requirement of Rule 11 and inappropriately shields the "ghost-lawyer" from accountability under Rule 11. *Laremont-Lopez v. Southern Tidewater Opportunity Center*, 968 F.Supp. 1075 (DC VA 1997) (rejecting the lawyer's argument that the lawyer was employed for the limited purpose of drafting the Complaint and no longer represented the plaintiff); *In re Mungo*, 305 B.R. 762 (DC SC 2003); *Johnson v. Board of County Commissioners*, 868 F.Supp. 1226 (D.C. Colo. 1994); *Letter of Private Reprimand No. 05-111-1865* issued by the Southern Nevada Disciplinary Board, *Nevada Lawyer*, August 2006 at p. 40; and

5. It circumvents the withdrawal of appearance restrictions of court rules<sup>7</sup>. *Laremont-Lopez v. Southern Tidewater Opportunity Center*, 968 F.Supp. 1075 (DC VA 1997) (rejecting the lawyer's argument that the lawyer was employed for the limited purpose of drafting the Complaint and no longer represented the plaintiff).

This Committee rejects the new view of the ABA Standing Committee on Ethics and Professional Responsibility expressed in ABA Formal Opinion 07-446 (May 5, 2007). The Committee believes that the better view is one which strikes a proper balance between the public policy of serving clients with unbundled legal services and the view that even disclosed "ghost-lawyering" is improper. This Committee adopts the rule that it is unethical to act as a "ghost-lawyer", unless both the "ghost-lawyer's" assistance and identity<sup>8</sup> are disclosed to the court by the signature of the "ghost-

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(d) Engage in conduct that is prejudicial to the administration of justice;..." (Formerly SCR 203).

<sup>7</sup>SCR 46 and Nevada Rule of Professional Conduct 1.16 (formerly SCR 166).

<sup>8</sup>Some ethics opinions or rules require that only the fact of lawyer assistance be disclosed without disclosing the identity of the "ghost-lawyer". For example, Florida requires that all papers filed with the court contain the disclosure: "Prepared with the assistance of counsel." Florida Bar Ethics Opinion 79-7 (as

lawyer" under Rule 11 upon every paper filed with the court for which the "ghost-lawyer" gave substantial assistance to the *pro se* litigant by drafting or otherwise. Rothermich, at footnotes 196 – 200; State Bar of New York Committee on Professional Ethics Opinion No. 613 (September 24, 1990); Connecticut Ethics Opinion 98-5 (January 30, 1998); Iowa Ethics Opinion 96-31 (June 5, 1997); *Duran v. Carris*, 238 F.3d 1268 (10<sup>th</sup> Cir. 2001) (Drafting a brief for a *pro se* appellant without signature is *per se* "substantial"); *Ellis v. Maine*, 448 F.2d 1325 (1<sup>st</sup> Cir. 1971); Oklahoma Bar Ethics Opinion 2001-4 (2001).

The Committee notes that some of the most worrisome occurrences of ghost-lawyering may be performed by nonlawyers engaged in unauthorized practice of law. For example, it is widely reported that non-lawyer paraprofessional businesses, for a fee, regularly seek to assist ostensibly *pro se* litigants in personal legal matters involving divorce, child custody, landlord-tenant disputes and similar matters. This assistance may include a substantial amount of counseling, legal advice, and preparation of documents intended to have legal effect or in connection with a legal proceeding.

This type of activity is both the unauthorized practice of law if performed by a nonlawyer and constitutes ghost-lawyering that is unethical if it is not properly disclosed to the tribunal and opposing parties. To the extent that a nonlawyer engages in such activity, he or she has violated both the Rules of Professional Conduct and state statutory law prohibiting unauthorized practice.

Although nonlawyers engaged in unauthorized practice are obviously not members of the Bar, their failure to comply with the Rules of Professional Conduct when engaged in unauthorized practice provides additional legal grounds for condemning their conduct and imposing punishment. For example, a nonlawyer engaged in such activity could properly be held civilly liable for the consequences of the activity in the same manner in which a lawyer in similar circumstances could be held liable for malpractice or breach of fiduciary duty.



### Question No. 3: Remedy

When a court is advised or suspects that a party ostensibly appearing *pro se* is actually assisted by a “ghost-lawyer”, the court may, in its discretion: (A) require the *pro se* litigant to disclose whether the litigant is being assisted by a “ghost-lawyer”; (B) if so, require the *pro se* litigant to disclose the identity of the “ghost-lawyer”; and (C) require the “ghost-lawyer” to appear and sign under Rule 11 all pleadings, motions and briefs in which the ghost-lawyer assisted. *In re Mungo*, 305 B.R. 762 (DC SC 2003). Therefore, when an appearing attorney is advised or suspects that a party ostensibly appearing *pro se* is actually assisted by a “ghost-lawyer,” the appearing attorney should move the court to exercise that discretion.

Where ghost-lawyering by a non-lawyer becomes apparent, the court should report unauthorized practice of law to the State Bar and advise the *pro se* litigant of prohibitions against such activity by nonlawyers.

### Question No. 4: *Ex Parte* Communication with “Represented” Person

A reverse “ghost-lawyering” question is the ethical obligation of the attorney dealing with a party being assisted by a “ghost-lawyer”. What are the ethical obligations of an appearing attorney in an action who must deal with an ostensibly *pro se* party when the attorney suspects or knows that the *pro se* party is being advise by a “ghost-lawyer”? Is it an *ex parte* communication prohibited by Rule 4.2<sup>9</sup> for the attorney to communicate with the *pro se* party? For example, after the *pro se* party tells the attorney that another attorney is assisting the party in the case, can the attorney communicate with the ostensibly *pro se* party about settlement of the case?

Assuming the attorney “knows” that the party is being assisted by the “ghost-lawyer”, the answer depends on whether the party is “represented” as that term is used in Rule 4.2.

In jurisdictions where undisclosed “ghost-lawyering” is ethical, it is consistently viewed that the *pro se* client is “representing” himself/herself for all aspects of the case.

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Formal Opinion 1987-2 (March 23, 1987).

<sup>9</sup>**Rule 4.2. Communication With Person Represented by Counsel.** In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.” Formerly SCR 182.

It follows in those jurisdictions that even when the attorney “knows” that the party is being assisted by a “ghost-lawyer”, for purposes of Rule 4.2, the “ghost-lawyer” is not “representing” the *pro se* party, and, the attorney may ethically communicate directly with the *pro se* party concerning all matters relating to the case, including settlement. Los Angeles County Bar Association Professional Responsibility and Ethics Committee Ethics Opinion 502 (November 4, 1999); 23 Los Angeles Lawyer (September, 2000).

On the other hand, in jurisdictions where undisclosed “ghost-lawyering” is not ethical, it would be inconsistent to follow the above view. In those jurisdictions, the view should be that the “ghost-lawyer” is unethically “representing” the ostensible *pro se* party for purposes of Rule 4.2.<sup>10</sup> In those jurisdictions, it would seem that where the attorney “knows” that the ostensible *pro se* party is actually “represented” by a “ghost-lawyer”, the attorney would be precluded by Rule 4.2 from communicating with the party. In that untenable situation, the attorney obviously cannot conduct or settle a litigation with a party with whom the attorney cannot communicate. The only solution would seem to be the requirement that – once a attorney knows that the ostensible *pro se* party is being assisted by a member of the bar – the attorney must report that communication to the court and move the court to exercise its inherent power to require the party to: (1) disclose the assistance and identity of the “ghost-lawyer”<sup>11</sup>; and (2) elect whether the appearing attorney must communicate about the case with the “ghost-lawyer” or the *pro se* party, or either, or both.

This Committee adopts the rule that in Nevada – which in this Opinion approves “ghost-lawyering” (by lawyers only; not by nonlawyers) so long as it is fully disclosed to the court – the *pro se* litigant, who is assisted by a disclosed “ghost-lawyer” providing unbundled services to the *pro se* litigant, is considered “unrepresented” for the purposes of the Rules of Professional Conduct. That has at least two consequences: (1) the appearing attorney’s communication with the *pro se* litigant is not an *ex parte* communication prohibited by Rule 4.2; and (2) the communicating attorney must comply with Rule 4.3<sup>12</sup> governing communications with “unrepresented” persons.

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<sup>10</sup>*Contra*, Oklahoma Bar Ethics Opinion 2001-4 (2001).

<sup>11</sup>*Cf. Wesley v. Don Stein Buick, Inc.*, 987 F.Supp 884 (D.C. Kan. 1997).

<sup>12</sup>Formerly SCR 183.

## Question No. 5: Non-Litigation Matters

The remaining question is the ethical considerations of "ghost-lawyering" in a non-litigation setting? For example, a real estate transaction in which one of the parties is being assisted anonymously by a member of the bar. Similar considerations apply. The identified attorney is entitled to know that the ostensibly unrepresented party is being assisted by a licensed but anonymous attorney. Likewise, the identified attorney is entitled to know with whom (s)he may ethically communicate about the transaction.

This Committee adopts a similar rule for "ghost-lawyering" in the non-litigation setting:

1. A member of the bar is engaging in "ghost-lawyering" in the non-litigation setting if the lawyer gives "substantial" legal assistance, by drafting or otherwise, to a party ostensibly not assisted, with the lawyer's actual or constructive knowledge that the legal assistance will be anonymously presented to the other attorney in the transaction by the ostensibly unassisted party; and
2. "Ghost-lawyering" is an unethical practice in the non-litigation setting, unless: (A) the "ghost-lawyer's" assistance and identity are disclosed in writing to the other attorney in the transaction; and (B) the disclosure notifies the other attorney whether that attorney must communicate about the transaction with the "ghost-lawyer" or the unrepresented party, or either, or both.