

CIVIL LEGAL SERVICES TO THE POOR IN TEXAS

A Status Report presented by the Texas Access to Justice Commission
to the Supreme Court of Texas
SEPTEMBER 11, 2008

Executive Summary

At the request of the Supreme Court of Texas, the Texas Access to Justice Commission filed its report on the status of civil legal services to the poor in Texas for the Court's September 11, 2008, hearing on this matter. The Commission submits this summary of its report to interested parties.

The Supreme Court of Texas held its first hearing on the status of civil legal services to the poor in Texas in January 2000. That hearing marked the beginning of a series of dramatic changes in the landscape of civil legal services to the poor in Texas. In September 2004, the Court conducted a second status hearing to monitor progress in increasing legal services to poor and low-income Texans.

The Commission can report significant progress since 2004, although most of the challenges to providing access to justice for all remain. New sources of funding have been developed while others have declined. Overall funding has increased by more than 17 percent, most of which is attributable to state-based funding rather than federal funding. Texas also has experienced significant increases in its poverty population and concomitant dramatic drains on its legal services system as a result of such unexpected crises as Hurricanes Katrina and Rita, and numerous other natural disasters. Providing quality service to clients remains the first priority of the legal services providers. The frontline delivery of direct legal services to the poor continues to be provided by the dedicated staff of legal aid and pro bono programs and thousands of volunteer lawyers throughout Texas.

The major problems that impact access to the justice system in Texas are limited resources, restrictions on uses of funding, scarcity of legal services in rural areas of the state, and a rapidly increasing poverty population. Texas experienced a 27 percent increase in its poverty population from 2000 to 2007 (the most recent available data), which does not include those Texans who have fallen into poverty due to the severe economic downturn in 2008.

The Supreme Court of Texas created the Commission to develop and implement policy initiatives to expand access to, and enhance the quality of, justice in civil legal matters for low-income Texans. Although the Commission was not established to govern the work of existing legal services providers, it was given the mandate to develop remedies to address the problems of access to justice, to assist all participants in developing statewide strategic alliances to more

effectively transform ideas into action, and to insure implementation statewide of programs that would enhance access to justice for the poor.

Support from the judiciary, and especially from the highest court, continues to be absolutely critical in the effort to increase access to the justice system. Texas has been extraordinarily fortunate to have that crucial and sustained support from the Supreme Court of Texas and from much of the Texas judiciary.

The State Bar of Texas has strengthened its long tradition of support for access to justice. The Bar has provided funding to and support for the Commission, as well as Texas Lawyers Care, the Bar's pro bono/legal services support department. Initiatives have included, among others, funding for the Texas Student Loan Repayment Assistance Program and online legal research for legal aid lawyers. State Bar leaders have worked with the Commission, the Court and other partners in the effort to increase funding for legal services to the poor.

Since 2004, new sources of funding for legal services have been developed or increased, while other sources, most notably federal funding from the Legal Services Corporation, have flagged, failing to keep pace with inflation. A new fee on sexually oriented businesses, while still facing court challenges, includes \$2 million, for the biennium, for legal services to sexual assault victims. Non-exempt Texas attorneys annually pay a \$65 legal services fee, half of which, approximately \$2 million annually, is devoted to civil legal services. The other half supports indigent criminal defense. That critical funding will continue, since its sunset provision was removed in the 2007 legislative session. The voluntary contributions that Texas lawyers make each year to the Access to Justice Campaign through their State Bar dues statements have generated in excess of \$2 million since 2004. These contributions have increased in the past two years, following several annual decreases attributable to the creation of the mandatory legal services fee.

The Texas Student Loan Repayment Assistance Program (SLRAP) was established to encourage lawyers to accept and remain in low paid legal aid jobs by assisting in repayment of very large student loans. The SLRAP, funded by the State Bar of Texas, the Texas Access to Justice Foundation (TAJF), and individual donors now provides financial assistance to all eligible legal aid lawyers who apply. The 2008 applicants earn an average salary of \$43,000, while carrying an average student debt of \$82,000 with monthly payments exceeding \$700. Through the SLRAP, participants receive up to \$400/month in assistance to defray repayment of the debt created by these student loans.

Undoubtedly, the most significant advance in resource development for legal services to the poor in many years, certainly since the Supreme Court hearing in 2004, is adoption of the new "comparability" rule for Interest on Lawyers' Trust Accounts (IOLTA) funds. The Supreme Court of Texas entered its order amending the existing IOLTA rule based on the unanimous recommendation of TAJF and the Commission. The rule had a significant and immediate impact on IOLTA revenue in 2007. Unfortunately, unanticipated falling interest rates have dramatically reduced this funding source, but despite the economic downturn, 2008 IOLTA funds still will

double the amount collected prior to comparability. The resource problem would be devastating to legal service delivery but for the bold and decisive action of this Court in 2006. TAJF also created its Prime Partner program, which recognizes banks that agree to pay a higher rate than required on IOLTA accounts. This important program is promoting an increase in IOLTA funds even in the face of noticeable decreases in the Federal Funds Target Rate. In the absence of the comparability rule, revenue for access to justice would have substantially decreased and legal aid programs would be confronting more daunting financial decisions.

In 2004, the Commission adopted a five-year Strategic Plan, which established major specific initiatives to significantly enhance access to the justice system for low-income and poor Texans. These broad initiatives included developing a statewide endowment program; pursuing a *cy pres* strategy; establishing a corporate counsel strategy; developing a comprehensive legislative strategy; dramatically expanding technology for all legal services providers; involving law schools in collaborative access to justice programs; expanding delivery of legal services to the underserved areas of the state; establishing quality training to enhance the advocacy skills of legal aid lawyers; and expanding and refining the use of communications to inform and educate the profession and the public. The Commission completed an in-depth study of the feasibility of a statewide endowment campaign over a period of two years and, based on the results of that comprehensive study, determined that an endowment campaign was not economically feasible at this time. With that lone exception, the Commission has developed and fully implemented all other programs and remedies incorporated in its Strategic Plan.

The Court Awards Strategies Committee is a joint committee of the Commission and TAJF, which will create a statewide campaign focused on obtaining revenues for legal services to the poor through court awards, such as *cy pres*. The Committee initiated this major effort at its meeting in August.

To pursue development of its corporate strategy, the Commission requested that the Supreme Court add an additional member to the Commission designated as a corporate/business representative. Concurrently, the Commission created the Corporate Counsel Committee in 2004 pursuant to its Strategic Plan initiatives. The Committee identified three areas of focus for its work: developing strategic initiatives for the Commission related to in-house corporate counsel, increasing corporate involvement in securing funding for legal services, and increasing pro bono involvement and participation among the large number of corporate in-house counsel.

In each Texas legislative session since the Commission's creation, the Commission has undertaken an active role in monitoring and promoting legislation to increase access to justice. Among its legislative efforts, in 2007, the Commission developed an "ATJ Day at the Texas Legislature" during which a designated team visited key legislators and leaders to discuss issues critically important to access to justice for low-income Texans. These 2007 visits were patterned on ABA Day in Washington, which has proved extremely effective in efforts to protect and increase federal funding for legal services to the poor. ATJ Day likewise was very successful and helped in the passage of important bills that affected available remedies for low-income Texans.

The Commission's Technology Committee has worked diligently and successfully to improve the technological capacity of Texas legal services programs. A fundamental objective of the Committee has been to establish and provide baseline level of technology for each legal services organization. The Commission recruited key technology leaders from large Texas law firms who spearheaded this effort. After extensive research of each of the TAJF-funded legal services providers, the Committee recommended a one-time bulk purchase of equipment and software totaling \$680,000 that would provide baseline technology for every service provider. The Committee also engaged in extensive negotiations to obtain the most cost effective vendor for the equipment. TAJF funded the purchases for its 37 grantees. The baseline technology was distributed in December 2007 and was made operational by early 2008. The Committee also concluded that delivery of legal services would be enhanced by quality technology training for legal aid staff that would improve client services through more efficient and innovative uses of technology. The Committee established a teaching and mentoring course that provided live trainings on Microsoft Word and Excel at their firms' offices in Austin, Dallas, Houston, and San Antonio, and at the University of Texas-El Paso and Texas Tech University campuses over a period of several months to accommodate legal staff located in various areas of the state.

The Commission formed the Law School Advisory Committee to address the strategic initiative to increase involvement of all law schools in access to justice issues. Comprised primarily of the deans of all nine Texas law schools, the Committee was requested to examine the law schools' role in addressing access to justice for the poor. As a result, a major achievement has been the creation of a consortium of law schools engaged in the Texas Access to Justice Internship Program. Through this program, law students from all nine Texas law schools are assigned and work in legal aid offices in underserved areas of the state in which there is no law school. The program, which just completed its third year, has been remarkably successful in providing increased legal services to the poor as well as introducing law students to the need for such public service. Also, both the University of Texas School of Law and Baylor University Law School, in cooperation with the Commission, have created Equal Justice Scholarships. These annual scholarships provide full tuition for the recipients in return for a commitment to practice with a legal services provider for at least three years upon graduation. Currently, all law schools are exploring options for increased involvement in access to justice issues.

At the Commission's request, the Supreme Court created the Task Force to Expand Legal Services Delivery to address the Strategic Plan's statewide initiative to expand delivery of legal services to the underserved areas of the state. The Task Force is made up of representatives of many State Bar Sections and its paralegal division, independent professional attorney organizations, Texas Young Lawyers Association, legal services providers, the executive director of the Office of Court Administration, and the court reporters association. The Task Force has been engaged in implementing a variety of pro bono efforts throughout the state. It plans to work with other state agencies to devise a crisis assistance plan to address the unexpected catastrophes that periodically occur with devastating consequences.

The Commission, in consultation with the directors of the largest Texas legal aid programs, embarked on a structured program to provide the highest caliber of advocacy training for legal aid lawyers to enhance their trial skills and techniques. All aspects related to participation in the advocacy program, including travel and lodging, are provided at no cost to legal aid attorneys. Volunteer trainers—predominantly Texas Fellows of the American College of Trial Lawyers—contribute their time, talent and expertise to train legal aid lawyers. The participants not only receive outstanding advocacy training but they also are encouraged and inspired by the mentoring they receive from some of the finest trial lawyers in the state.

The full report submitted to and filed with the Supreme Court of Texas includes detailed information on specific activities and initiatives of the Commission, the Supreme Court of Texas, the State Bar of Texas, the Texas Access to Justice Foundation, and the Texas Bar Foundation related to access to justice. Supporting documents and additional information are available in the Appendix, Volume 2 of the report.

It is only appropriate to conclude this summary by expressing the Commission's appreciation for the unwavering and enthusiastic support of the Court. The Court's creation and ongoing stalwart support of the Commission's initiatives and programs has significantly enhanced the justice system and has made a difference in the lives of the people of Texas.