Expanding access to the civil justice system

2009–2013
SUMMARY REPORT
Fast Facts Regarding Civil Access to Justice

More than 2.2 million people in North Carolina qualify for legal aid, over 23% of the population. This includes more than 16% of seniors and 33% of children.

There is one private attorney for every 562 people in North Carolina. However, there is only one legal aid attorney for every 13,170 eligible, low-income individuals.

The average annual household income for legal services clients is $15,000.

In 2013, volunteer legal aid attorneys donated over 21,000 hours of pro bono legal services worth at least $3,150,000.
About the Commission

Guiding Recommendations of the Commission

In its May 2008 initial report, the Equal Access to Justice Commission laid out the following recommendations to guide its activities:

- Increasing state funding for legal aid organizations.
- Providing a statutory right to counsel for specific types of cases.
- Taking new measures to increase *pro bono* representation.
- Combining the efforts of lawyers with leaders in the business community, the religious community, the government community, the nonprofit community, the academic community, and the client community.
- Establishing clear guidelines for the courts in cases with *pro se* litigants and providing more assistance for those representing themselves in the courts *pro se*.
- Providing more support for legal aid attorneys, especially through debt reduction.
- Improving access to the courts for those with limited English proficiency.
- Educating the public about the realities of poverty and barriers to access to the civil justice system.

COMMISSION MEMBERS 2009–2013

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<td>Reginald Combs</td>
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<td>E. Fitzgerald Parnell, III</td>
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<td>Anita S. Earls</td>
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<td>Marion A. Cowell, Jr.</td>
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Accomplishments of the Commission: 2009–2013

Organized Large Law Firm Pro Bono Summit

On October 14, 2009 the Commission held a Pro Bono Summit for large law firms at the Charlotte School of Law. The Commission invited managing partners of North Carolina’s largest law firms and the general counsel of area businesses and banks. James Strother, General Counsel of Wells Fargo, co-hosted the event. The goal of this Summit was to re-energize and expand pro bono participation and leadership among large law firms and corporate legal departments in North Carolina.

The morning session, for managing partners and corporate counsel, featured speakers Jim Strother and Esther Lardent, Founder and President of the Pro Bono Institute. The invitation-only group explored large law firm pro bono developments from around the country and discussed the pro bono activities at large law firms in North Carolina.

Following lunch, law firm pro bono coordinators, pro bono partners, bar association staff, general counsel, and legal aid staff engaged in more detailed planning. They shared their expertise and took advantage of the resources provided by Ms. Lardent. The focus of the afternoon session was on creating more effective pro bono partnerships, training opportunities, pro bono models, and substantive areas of need.

Advocated for a Pro Bono Rule Amendment

Upon recommendation of the Commission, the State Bar Council approved a rule revision to implement a North Carolina version of ABA Model Rule 6.1 to elevate the importance of the duty of pro bono service and to recruit more lawyers to address the gap in the provision of legal services to those who cannot afford to pay. This rule change was approved by the North Carolina Supreme Court in January 2010. The Commission continues to educate lawyers about Rule 6.1 through CLE presentations and other venues.

Secured Ongoing Funding for the Commission

The North Carolina State Bar Council adopted a rule change to add $.50 per CLE credit hour to support the work of the Commission. This fee will be collected by the State Bar for our use and will reduce our reliance on IOLTA funding during this decrease in its coffers due to the economic downturn. This funding will also help to ensure continuation of our activities to address statewide access to justice issues.

Recommended Comparability Rule for IOLTA

The Commission’s Resource Development Committee, chaired by George Hanna, studied the issue of comparability in our state and recommended that the Commission support the adoption of a comparability rule. By resolution, the Commission encouraged the State Bar Council to adopt a comparability rule. The IOLTA Board of Trustees and the North Carolina State Bar Council proposed an IOLTA rule revision that was approved by the North Carolina Supreme Court in January 2010.

History of the Commission

Existing legal aid programs in North Carolina have long been unable to meet the need of low-income people for legal assistance in cases involving basic human needs. As the number of low-income people needing legal assistance has continued to increase, court, bar, and community leaders in North Carolina have worked to develop new methods and strategies to address this growing need.

In November 2005, shortly before his retirement from the bench, Chief Justice Lake, by order of the state Supreme Court, established the North Carolina Equal Access to Justice Commission, making North Carolina the 19th state to establish such an entity. The mission of the Commission is to expand access to civil legal representation for people of low income and modest means in North Carolina. Today there are 33 state access to justice commissions.

The 25-member Commission was structured to include representative stakeholders from across the state, to reflect the diversity of ethnic, gender, legal, and geographic communities of North Carolina, and to be chaired by the Chief Justice.

Commission members include representatives of the judiciary, legal aid programs, law schools, general public, state government, philanthropic organizations, business communities, and client communities, as well as practicing lawyers.
Stabilizing NC Families: Legal Aid Fights Domestic Violence

Elizabeth’s story

“He held the gun to my head and told me to say goodbye to my daughter.”

“Elizabeth’s” alcoholic husband held her captive and tortured her for three terrifying days. During the attack, their two-year-old clung to her mother, crying. When her husband finally passed out, Elizabeth escaped to the hospital—having been almost beaten to death. A legal aid attorney helped her secure a court protective order, a divorce, and custody of her daughter. Legal aid allowed Elizabeth to escape abuse and rebuild her life. She now works as a school principal and is married to a kind and loving man. Her daughter is thriving in kindergarten.

Elizabeth is just one of 60,000 domestic violence victims in North Carolina each year. Legal aid programs help victims and their children escape abuse by obtaining and enforcing protective orders and helping victims establish financial independence from their abusers.

Legal aid saves lives.

Accomplishments of the Commission: 2009–2013

Honored Advocates for Access to Justice


Proposed Statute Change to Permit Legal Representation of Third Parties by Attorneys of Nonprofit Public Interest Law Firms

There are numerous nonprofit organizations incorporated in North Carolina, or incorporated in other states, that are recognized as tax-exempt public interest law firms by the IRS. Generally these are 501(c)(3) organizations that routinely represent third parties in litigation in state and federal courts. The cases they handle raise issues of general importance to the public in areas as diverse as environmental law, civil rights, disability rights, consumer rights, and religious freedom.

These organizations provide much needed representation to clients who otherwise would not have access to the courts. A North Carolina statute appeared to limit such representation, because it limited such practice to “rendering indigent legal services.” Working with the North Carolina State Bar, the Commission and other interested organizations worked to change the statute to permit such representation by public interest law firms. This change was enacted in 2009.

Advocated to Maintain Funding for Civil Legal Aid

In 2009, working with the NC Bar Association’s 4ALL Task Force and the Equal Justice Alliance, the Commission’s Legislative Committee began educating legislators about the need to maintain state funding for civil legal aid and NC LEAF, North Carolina’s loan repayment assistance program for public interest attorneys. Despite efforts, a $4.5 billion dollar shortfall in the state budget impacted all groups who received state appropriations. The Access to Civil Justice Act pass-through money from the State Bar was reduced $250,000.

The Commission continues to coordinate legislative advocacy for state and federal funding for legal aid. The Commission has developed talking points, a website, a fact sheet, and a series of postcards that highlight legal aid clients and the impact of legal aid work. In 2012, the Commission developed a power point presentation that was presented by the President of the North Carolina Bar Association to the committee responsible for legal aid funding in the North Carolina General Assembly. In 2013, the Commission continued efforts to educate legislators about the value of legal aid. No further cuts were made to state appropriations in 2013.
Accomplishments of the Commission: 2009–2013

Established Right to Counsel Committee

Representation by a qualified advocate is necessary to ensure fair and adequate resolution of disputes in our legal system. It is unacceptable that legal processes are sometimes used to deny basic necessities to our fellow citizens without our state providing them with any legal help. Pursuant to the recommendations in the 2008 Equal Access to Justice Commission Report, the Right to Counsel Committee of the Equal Access to Justice Commission was established on August 28, 2009. The mission of the Committee is to explore the establishment of a right to counsel in certain civil cases in North Carolina.

Undertook Analysis of Giving Among the North Carolina Legal Community

A Resource Development Planning Meeting was held in January 2011 with Meredith McBurney, Fundraising Consultant for the American Bar Association and Management Information Exchange. The goal of the meeting was to determine how the leaders of the North Carolina legal community can help improve the giving culture and thus increase contributions to the three legal aid organizations that provide general legal services and have an annual fundraising campaign. Ms. McBurney analyzed current fundraising efforts and made initial recommendations.

Attendees agreed that the Commission should be responsible for coordinating the communication and messaging around the campaign. The Commission will also gather a list of high profile legal community and other opinion leaders to support the message of meaningful contributions to legal aid. These leaders would provide a higher visibility to the campaign and hopefully inspire all members of the bar to give.

Developed Statewide Communications Plan to Promote Legal Aid

In 2011, the Communications Committee of the Equal Access to Justice Commission, working with a marketing agency, developed a statewide communications plan to support the annual access to justice campaigns of Legal Aid of North Carolina, Inc., Legal Services of Southern Piedmont, and Pisgah Legal Services. The goal of this plan is to educate the bar, the General Assembly, and the general public about legal aid. The Committee developed a new website (www.ncaccessstojustice.org) and a series of print ads to be published in bar publications. This effort continues to evolve and now includes the following under the "campaign" umbrella:

- Legislative advocacy for state and federal funding;
- Law firm fundraising campaign;
- Individual donor fundraising campaign;
- Education of bar and general public through print ads and website;
- Brand and messaging adopted by one provider for pro bono efforts.

Negotiation not Litigation: Legal Aid Prevents Foreclosure

The Murrays’ Story

Legal Aid of North Carolina’s Mortgage Foreclosure Prevention Project in Winston-Salem represented the Murrays, a couple with three school-aged children. The family had been foreclosed upon, and the padlocking of their home of five years was imminent. When Mr. Murray was injured on the job, they had fallen behind on their payments. Their lender had entered into a loan modification with them but then suddenly backed out. Because the lender had purported to enter into an agreement and then refused to honor it, attorneys filed a complaint regarding this breach of contract and filed a temporary restraining order in order to prevent the padlocking of the family’s home. The goal was to have time to investigate further and hopefully resolve the matter.

After a year and a half of negotiations during which the Murrays were able to remain in their home, a settlement was reached. This new loan modification includes low interest and great terms and saved the clients nearly $6,600 in fees. Mr. Murray is working full-time again, and the family remains in their home.

Legal aid works with lenders and homeowners to save homes and preserve community property value. Legal Aid of North Carolina’s foreclosure caseload more than doubled from 2008 to 2011.

Legal aid helps North Carolina families avoid homelessness.
North Carolina’s three civil legal aid providers

Legal aid programs are independent nonprofits. Our state’s legal aid programs are:

- **Legal Aid of North Carolina (LANC)**, which serves residents in every county from 20 offices.
- **Legal Services of Southern Piedmont (LSSP)**, which is located in Charlotte and serves residents in the Charlotte-metro area and in west-central North Carolina.
- **Pisgah Legal Services (PLS)**, which is located in Asheville and serves residents of Buncombe, Henderson, Madison, Polk, Rutherford, and Transylvania counties.

Civil legal aid programs provide free legal services to low-income people in noncriminal cases.

North Carolina’s three providers of legal aid work to:

- Help victims of domestic violence escape abuse;
- Fight scams upon consumers, especially seniors;
- Preserve homes and improve housing conditions;
- Protect and improve household income for families and seniors;
- Fight for access to medical care and coverage in federal programs;
- Recruit and train private lawyers to donate their time, money, and services in order to increase access and to reduce the overall costs.

Accomplishments of the Commission: 2009–2013

**Coordinated Large Law Firm Campaign with Legal Aid of North Carolina, Inc. and Legal Services of Southern Piedmont**

One of the outcomes of the January 13, 2011 Resource Development meeting was the identified need to increase giving by law firms. Research identified 51 North Carolina firms with 20 or more attorneys; fewer than half of these made gifts as a firm. Of those firms that made gifts, the giving range was from a high of $455 per attorney to a low in the single digits per attorney. Only nine of the 51 firms with 20 or more attorneys give at the level of $200 or more per attorney.

LANC and LSSP agreed to coordinate fundraising from large firms, and with the EATJC have developed a large firm division as part of their joint Access to Justice Campaign. The campaign is co-chaired by four high-profile bar leaders from different parts of the state. This campaign initially focused on the largest 25 firms in North Carolina and has now expanded to small- and medium-sized firms. In its first two years, the campaign raised almost $200,000 each year. This law firm campaign is separate from the annual individual donor campaigns that both LANC and LSSP run. However, all fundraising activities are coordinated and use the same branding and messaging developed for the Access to Justice Campaign. The campaign annually recognizes attorney and firm contributions and *pro bono* commitments through ads in Lawyer’s Weekly and the State Bar Journal.

**Published Cy Pres Manual**

In 2011, the Commission developed a manual, *Cy Pres and Other Court Awards*, that details the mechanics of *cy pres* awards, other court awards, and negotiated settlements that can benefit legal aid. The Commission has ongoing efforts to educate lawyers and judges about the importance of *cy pres* and other court awards. The manual was most recently updated in 2013 and is provided annually to judges across the state.

**Helped to Coordinate Statewide Pro Bono Veterans Network**

The Commission has worked with National Legal Aid and Defender Association, National Veterans Legal Services Program, North Carolina Bar Association, and a coalition of stakeholders who provide services to veterans to develop the NC Veterans Pro Bono Network. The Network is currently halfway to its fundraising goal that will enable it to hire its first staff person to recruit and place *pro bono* attorneys to meet veterans’ legal needs as well as to oversee other related projects. The Commission was awarded a grant from the American Bar Association in late 2012 to establish a resource website with legal information for North Carolina veterans. The website launched in the spring of 2014.
NC IOLTA Update

The last five years have been both exciting and difficult for NC IOLTA as significant changes designed to increase income were made to program operations, and yet the program has suffered significant income decline due to the economic downturn. The downturn has seen unprecedented low interest rates being paid on lower principal balances in the accounts. After implementing a mandatory program in 2008, NC IOLTA posted its highest annual income ever—over $5 million. This move gave the program a one-year respite from the effects of the economic downturn, allowing the program to make $4.1 million in grants for 2009 and add funds to reserve. Since that time, income has fallen over 50%, and in 2012, income from IOLTA accounts dipped under $2 million for the first time since 1994.

In response to the income decline, beginning with the 2010 grants, the program has limited grant-making to a core group of (mainly) legal aid providers. Even with that restriction and using almost $2.4 million in reserve funds over three years, grants dramatically decreased (by over 40%). By the end of 2012, our reserve fund was depleted to under $450,000.

Receipt of cy pres funds from class action awards—residual funds remaining after exhaustive efforts are made to locate and distribute funds to class members following the collection of a class action judgment—has provided an important boost to IOLTA income. A $1.2 million award received in 2012 meant that we were able to keep 2013 grants steady at $2.3 million and add funds to reserve. Two awards totaling over $650,000 received in 2013 will allow the program to keep grants steady for another year in 2014, though some funds from reserve will be required to make grants at that level.

The Equal Access to Justice Commission (EATJC) has published a manual on Cy Pres and Other Court Awards to educate judges and attorneys as to the importance of such awards to legal aid organizations. This manual is available on the NC IOLTA website, www.nciolta.org and the NC Equal Access to Justice website, www.ncequalaccesstojustice.com. The manual includes information on different types of court awards, tips for structuring award agreements, examples of awards, and a primer on how to structure a cy pres settlement.

The program has persevered in implementing operational changes designed to increase income. In 2010, the NC Supreme Court approved revisions to the NC IOLTA rules that require lawyers to hold their IOLTA accounts only at “eligible” banks—those banks that agree to pay IOLTA accounts the highest rate available to those banks’ other customers when the IOLTA accounts meet the same minimum balance or other account qualifications (known as “comparability”). Implementation of comparability includes a Prime Partner program, whereby banks that agree to go above and beyond the requirements are specially recognized.

In 2012, the program implemented a revision to the Good Funds Settlement Act directing settlement agents who maintain a trust or escrow account for closing and loan funds to pay interest earned on such accounts to NC IOLTA.

In the midst of these turbulent times, NC IOLTA celebrated its 25th anniversary in 2009. To honor the occasion, the NC State Bar Journal published a three-part series of articles on NC IOLTA focusing on the program’s exceptional leadership, the ups and downs of IOLTA income over the years, and the program’s grant-making. The program continues to focus on the work being accomplished by grantee organizations by publishing grantee spotlights in the quarterly State Bar Journal and on the website, www.nciolta.org.
Legal Aid of North Carolina & Legal Services of Southern Piedmont would like to recognize the following major donors to our second annual joint firm giving campaign in 2013:

**Above & Beyond Firms—$500/Attorney**
- Maxwell, Freeman & Bowman

**Pacesetter Firms—$300/Attorney**
- Alston & Bird
- Kilpatrick Townsend & Stockton
- Myers Bigel Sibley & Sajovec

**Honor Roll Firms—$200/Attorney**
- Dechert
- Law Office of Margaret M. Hunt
- Pulley, Watson, King & Lischer
- Scudder & Hedrick

**Supporter Firms—$100/Attorney**
- Benton Family Law
- Hunton & Williams
- King & Spalding

**Supporter Firms—$100/Attorney (continued)**
- James McElroy & Diehl
- Murchison, Taylor & Gibson
- Nelson Mullins Riley & Scarborough
- Poyner Spruill
- Schell Bray
- Winston & Strawn
- Womble Carlyle Sandridge & Rice
- Wyrick Robbins Yates & Ponton

**Other Contributors**
- Brock & Scott
- Cadwalader, Wickersham & Taft
- Cranfill Sumner & Hartzog
- Hamilton Stephens Steele & Martin
- Hedrick Gardner
- Johnston, Allison & Hord
- Moore & Van Allen
- Williams Mullen Foundation

Additionally, we would like to recognize the following major donors to our inaugural joint law firm giving campaign in 2012:

**Above & Beyond Firms—$400/Attorney**
- Maxwell, Freeman & Bowman

**Pacesetter Firms—$300/Attorney**
- Alston & Bird
- Harris Winfield Sarratt & Hodges
- Kilpatrick Townsend & Stockton
- Lewis, Deese, and Nance
- Myers Bigel Sibley & Sajovec

**Honor Roll Firms—$200/Attorney**
- Dechert
- McGill & Noble
- Scudder & Hedrick
- Tharrington Smith

**Supporter Firms—$100/Attorney**
- Bernhardt and Strawser
- Block, Crouch, Keeter, Behm & Sayed
- Brock & Scott
- Hartsoe & Associates
- Hester Grady & Hester
- Hunton & Williams
- Katten Muchin Rosenman

**Supporter Firms—$100/Attorney (continued)**
- King & Spalding
- Norrelli Law
- Poyner Spruill
- Pulley, Watson, King & Lischer
- Ray & Pennink
- Winston & Strawn
- Womble Carlyle Sandridge & Rice
- Wyrick Robbins Yates & Ponton

**Other Contributors**
- Brooks, Pierce, McLendon, Humphrey & Leonard
- Cranfill Sumner & Hartzog
- Crossley, McIntosh Collier Hanley & Edes
- K&L Gates
- Moore & Van Allen
- Murchison, Taylor & Gibson
- Nelson Mullins Riley & Scarborough
- Rountree Losee & Baldwin
- Shipman & Wright
- Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan
- Williams Mullen Foundation
- Wood Jackson
“‘Equal justice under law’ is not merely a caption on the façade of the Supreme Court building, it is perhaps the most inspiring ideal of our society… It is fundamental that justice should be the same, in substance and availability, without regard to economic status.”

Former U.S. Supreme Court Justice Lewis Powell