

## **ACCESS TO JUSTICE COMMISSIONS:** increasing effectiveness through adequate staffing and funding



**A Report Compiled for the ABA Resource Center for Access to Justice Initiatives**  
Made Possible Through the Support of the Public Welfare Foundation



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Made Possible Through the Support of the Public Welfare Foundation

Prepared by Mary Lavery Flynn, Consultant

AMERICAN BAR ASSOCIATION STANDING COMMITTEE

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# ACCESS TO JUSTICE COMMISSIONS: INCREASING EFFECTIVENESS THROUGH ADEQUATE STAFFING AND FUNDING

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## INTRODUCTION: ACCESS TO JUSTICE COMMISSIONS - FILLING A NEED

*The rapid spread of the Access to Justice Commission model has been one of the most striking and consequential justice-related developments of the past decade.<sup>1</sup>*

In 1998, a handful of access to justice commissions existed around the country. Since then, an amazing phenomenon has occurred: so many additional access to justice commissions were established that we now have forty states and territories with commissions taking responsibility for coordinating efforts to improve the civil justice system. They have become an important part of the local and national infrastructure of organizations pursuing comprehensive access to justice.

Rejecting the “silo” approach, where bar associations or legal aid or court systems worked somewhat independently and with inadequate coordination, these commissions serve an umbrella function, involving an expanded range of key justice system stakeholders from both the public and private sectors working together to develop meaningful systemic solutions to the chronic lack of access for disadvantaged members of society. In states where no formal “access to justice commission” was established, there has often been a significant level of increased coordination among stakeholders to improve the civil justice system.

There was such a void to fill. In 2016, the Legal Services Corporation estimated that 86% of the civil legal problems reported by low-income Americans during the prior year received inadequate or no legal help.<sup>2</sup> A significant lack of funding for legal aid was documented by numerous state and national surveys.<sup>3</sup> This lack of funding was exacerbated by a tremendous disparity in funding available for civil legal aid among the states and uneven funding levels for different communities within individual states. The impact of this lack of legal aid and the increasing cost of legal assistance quickly became evident in courthouses in every corner of the country. The National Center for State Courts in a 2015 survey found that “... [a]t least one party was self-represented (usually the defendant) in more than three-quarters of the cases.”<sup>4</sup>

**The role of the Conference of Chief Justices and other key supporters:** Because of the impact on the judicial branch and the successful examples of the first few access to

**In 2016, the Legal Services Corporation estimated that 86% of the civil legal problems reported by low-income Americans during the prior year received inadequate or no legal help.**



justice commissions, chief justices began to support the establishment of state-based commissions to provide the leadership needed to address the crisis. The Conference of Chief Justices and Conference of State Court Administrators adopted a number of resolutions over the years, beginning in 2004, supporting the establishment of state access to justice commissions. Resolution 8, adopted by the Conference of Chief Justices and State Court Administrators in 2010, brought significant impetus to the expansion of commissions by encouraging the establishment of a commission in every state and U.S. territory:

### **In Support of Access to Justice Commissions**

WHEREAS, many states have established an access to justice commission to ensure the effective delivery of justice to all; and

WHEREAS, access to justice commissions have achieved remarkable results and have been recognized as one of the most important justice-related developments in the past decade as championed by Professor Laurence H. Tribe, Senior Counselor for Access to Justice, United States Department of Justice, in his remarks to the Conference of Chief Justices and the Conference of State Court Administrators during their 2010 annual meeting;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators support the aspirational goal that every state and United States territory have an active access to justice commission or comparable body.

[Resolution 8 was adopted as proposed by the CCJ/COSCA Access, Fairness and Public Trust Committee at the 2010 Annual Meeting on July 28, 2010.]

The support of chief justices in their own states was also a major factor in the rapid expansion of access to justice commissions. In many states, commissions would not have been established without supreme court leadership.

The American Bar Association adopted a formal policy resolution in 2013 supporting the establishment of state access to justice commissions, and its Standing Committee on Legal Aid and Indigent Defendants (SCLAID) has worked hard to support the expansion of commissions. The ABA established the first national support center for state access to justice commissions in 2002, the ABA Resource Center for Access to Justice Initiatives, with support from private philanthropy. It built an extensive web library of materials, authored articles in various publications promoting access to justice commissions, host an annual meeting of commissions, and provide support for commission leadership and staff members on an ongoing basis.

The National Center for State Courts set up a Center on Court Access to Justice for All



to help implement the development and expansion of access to justice commissions. One key resource is the Justice for All (JFA) Project that was recently established within the National Center for State Courts, with funding from the Public Welfare Foundation, the Kresge Foundation, and Open Society Institute. The goal of the JFA project is:

...to help states design a system that enables everyone to get access to the information and effective assistance they need, when they need it, and in a format they can use. The intent was to maintain existing capabilities and resources that support access to justice, and to supplement them to fill gaps in service to reach those who are unable now to obtain the legal help they need.<sup>5</sup>

“Voices for Civil Justice,” a non-profit, national communications initiative, conducted research about support for equal justice and helped expand awareness of the crisis and of the solutions being implemented.

These and other efforts would not have been possible without the leadership and support of private philanthropy, particularly the Public Welfare Foundation. It provided significant support to the National Center for State Court’s Center on Court Access to Justice for All and to the ABA Resource Center for Access to Justice Initiatives largely to expand and help build the capacity of the commissions, including mini-grants that enabled 12 new commissions to come into existence. Support was also provided by the Kresge and Bauman Foundations and the ABA Litigation Section. This public/private partnership has proven to be an extremely successful model for building a national network of entities dedicated to improving civil justice.

**Taking advantage of the moment:** This Report is intended to help access to justice commissions take advantage of the high visibility of the commission movement and the many successful commission initiatives across the country. By leveraging this general level of support into ongoing stability for an individual commission, commission members can develop a strong, stable infrastructure, with professional staff, allowing them to focus all their energy on pursuit of their civil justice mission.

This report can help support the development and expansion of access to justice commissions by centralizing information about how they are staffed and funded, providing examples and links, and encouraging the strategic use of resource development ideas. This information can be invaluable to anyone wishing to move their commission to the next level of accomplishment.

While several commissions have achieved impressive results without hiring paid staff, it is clear from the experience of commissions around the country that professional staff plays a key role in ensuring that commissions fulfill their true potential. And it takes strong leadership within each commission to develop stable, ongoing funding sources to put in place an effective staffing structure.

# PART I: FINDINGS AND RECOMMENDATIONS

## A. FINDINGS:

- **Broad, active stakeholder involvement increases the impact of access to justice commissions.** The most effective commissions reach beyond the usual players within the judicial branch to involve participants from business, civic, social services, and community groups. Coordinating the efforts of a broad range of stakeholders can lead to a heightened level of public awareness of the crisis, a greater number of recommended contributions to solving that crisis, and a broader reach to potential allies and supporters who can help make the solutions a reality. The expanded group of supporters also leads to increased options for obtaining funding and possible in-kind staffing and administrative support, especially for special projects.
- **Professional staff plays a key role with effective commissions.** Experience shows that access to justice commissions with at least one full time coordinator can more readily fulfill their mission.

Adequate and effective staffing is necessary to provide Access to Justice Commissions with support, continuity, communications, and continued momentum. The skill, ability, and energy level of a Commission's staff are essential to the success of the Commission's effort.<sup>6</sup>

While some commissions have robust staff support, many commissions have little or no staffing assistance.

- One-quarter of commissions have an average of approximately two full time staff persons;
- Another quarter of all commissions have an average of one full time staff person;
- Approximately half of all commissions have, at most, a half-time coordinator, or have no staffing at all. These commissions rely on the energy of their volunteers, particularly the chair. (Some of these commissions receive very limited in-kind administrative support from a stakeholder institution or firm.)
- **The leadership of the Conference of Chief Justices, as well as individual chief justices, in expanding access to justice commissions around the country cannot be overstated.** Both the very public resolutions and the more subtle acts of support and encouragement have been instrumental in nurturing establishment of access to justice commissions in 40 states and territories, as of this writing.
- **The support of the legal aid community is extremely valuable for successful commissions.** Many in the legal services community have championed the



leadership role of the access to justice commissions and have supported stable operating funds for the commissions. This support helps avoid the perception that there is competition for scarce resources. In fact, this support can help bring stability to a commission which, in turn, puts the commission in a position to help raise significant funding for the entire statewide legal services delivery system.

- **Private philanthropy has strategically nurtured the expansion of commissions.** The access to justice commission expansion would not have occurred without the key role played by private philanthropy, led by the Public Welfare Foundation, which was joined by the Kresge Foundation and the Bauman Foundation. This successful support from private foundations should be publicized to encourage support from others within the private philanthropic community.
- **Small grants have had a huge impact.** Commissions can accomplish a great deal with a relatively small financial investment, given their high level of volunteer involvement. The mini-grants established by the Public Welfare Foundation, for example, offered grants of between \$5,000 and \$20,000, helping a dozen commissions come into existence. Another example is the strategic use of small travel grants that enabled state supreme court justices to participate in the ABA's annual National Meeting of State Access to Justice Commission Chairs meetings, where they've learned more about how these commissions function and have come to appreciate the key role they can play in their own state. This should help encourage potential donors who may believe that only a large infusion of funding can make a difference.
- **Approximately one-third of commissions are involved with fundraising for their operational expenses or special projects.** Many commissions have basic expenses provided through a host institution, and some of them may pursue fundraising only for special projects. For example, most of the sixteen court-based access to justice commissions do not need to fundraise to support their own general operating needs, and some periodically pursue limited fundraising efforts for special projects.
- **Coalitions working with commissions help ensure the success of special projects.** Fundraising for commission special projects is often done as part of coalitions with other stakeholders; where necessary, a nonprofit that is part of the coalition may take the lead on direct fundraising, so there are no conflicts for commissioners who need to avoid direct involvement, such as judicial officers who can only support legislative funding proposals.

**This successful support from private foundations should be publicized to encourage support from others within the private philanthropic community.**

- **Very creative approaches to developing ongoing resources to support commissions are emerging across the country.** These creative ideas include a membership system for stakeholders; CLE fees or fines; royalties for jury instructions; etc. These creative solutions need to be shared nationally, and new ideas developed, to maintain the stability of the access to justice commission movement.

## B. RECOMMENDATIONS:

### Recommendations for individual commissions:

- **Be creative about potential funding sources:** Remember that private philanthropy and the business community are major untapped sources in most states. Commissions need to plan for diversification for long-term stability, so even those commissions with current support may want to think ahead to how they would replace some or all of their existing funding, if the need arose.
- **Have a minimum staffing level as your goal:** The "Findings" section above, and the details available elsewhere in this report, describe the key role that a full-time staff director can play.

### Commissions should seek to have one full time director be their minimum staffing level.

Commissions should seek to have one full time director be their minimum staffing level. Remember

the key role that commission leaders need to play in this effort to establish an effective, stable infrastructure for their commission.

- **Share the information in this report:** It would be helpful for commissions to share the information in this report with commissioners, with potential funders, and with other existing justice system stakeholders. The report will be available online at [www.atjsupport.org](http://www.atjsupport.org), and copies can be distributed to appropriate individuals and organizations that can help you achieve long-term financial stability.
- **Potential New Supporters:** More importantly, it is vital that commissions reach out to potential new supporters. Involving current justice system stakeholders can be the key step to getting broader societal support, which can lead to financial and in-kind resources. Note the range of key stakeholders involved with commissions around the country, and consider expanding the range of stakeholders involved with your own Commission.

## Recommendations for National Organizations Supporting Access to Justice Commissions:

- **Continue building a national network of commissions:** Nationally, it is important to continue to build a strong national infrastructure to support the access to justice commission movement. The national network needs to take advantage of the opportunity available right now, when so much focus is on achieving full access and the Conference of Chief Justices has offered a fresh mandate. Commissions need sufficient capacity to be full partners in this effort, which requires stable, adequate levels of financial support and effective professional staffing.

Key players need to be involved, including the American Bar Association (ABA), the National Legal Aid and Defender Association (NLADA), National Center for State Courts (NCSC), SRLN (Self-Represented Litigation Network), Voices for Civil Justice, and the Conference of Chief Justices and State Court Administrators. The organized private philanthropic community should also be pulled into this effort, and the Legal Services Corporation and the National Association of IOLTA Programs (NAIP) can also be important supporters.

**Commissions need sufficient capacity to be full partners in this effort, which requires stable, adequate levels of financial support and effective professional staffing.**

- **Ongoing collaboration on staffing and funding:** The national network should establish an ongoing collaboration to maintain and disseminate updated information on staffing and funding opportunities. This should include the active involvement of commission leadership and staff, through the existing structure of the ABA and with the support of the National Center for State Courts.
- **Establish role for non-commission states:** Finally, the national network of access to justice commissions would benefit from the involvement of all states that are interested in pursuing true access to justice for all. This can be achieved by reaching out to stakeholders in non-Commission states, offering an avenue for them to participate in national events, share ideas and resources, and expand the access to justice tent.

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## PART II: PROFILE OF COMMISSIONS: STRUCTURE AND ACTIVITIES

Every state or territory is different—geographic size, population, economy, politics, and culture. Each access to justice commission has melded the needs of its local stakeholders with the basic format that commissions have adopted across the country. It is quite remarkable how similar they are, given the diversity of the country. Nearly all of these commissions were established by their Supreme Courts, while a few were set up by other entities but have significant court involvement and/or appointment power. The ABA defines an access to justice commission as:

A high-level commission or similar formal entity composed of leaders representing, at minimum, the state (or equivalent jurisdiction) courts, the organized bar, and legal aid providers. Its membership may also include representatives of law schools, legal aid funders, the legislature, the executive branch, and federal and tribal courts, as well as stakeholders from outside the legal and government communities.

Its core charge is to expand access to civil justice at all levels for low-income and disadvantaged people in the state by assessing their civil legal needs, developing strategies to meet them, and evaluating progress. Its charge may also include expanding access for moderate-income people.<sup>7</sup>

Access to justice commissions coordinate with many partner entities to be sure that they are able to address all normal key functions of a commission. This is especially important where a commission, for a variety of reasons, is unable to take responsibility for a key statewide function, such as certain justice system reforms or increasing

**Access to justice commissions often serve a “catalyst” function, working with others to address problems that had been ignored too long.**

funding for the legal services delivery system. The commission needs to be part of a larger conversation about how those functions will be addressed, even if the commission is not directly involved with the effort.

Access to justice commissions often serve a “catalyst” function, working with others to address problems that had been ignored too long. They also play an “incubator” role by developing a range of possible approaches to the challenges they identify. But in order to successfully

fulfill these roles, they need to make sure that the solutions they identify are implemented by the appropriate institution. Language access approaches, for example, need to become part of the judicial system, freeing up the commissions to focus on the next challenge on the horizon. Commission subcommittees take the lead to develop these various initiatives, often involving non-commissioner volunteers.

Some commissions have a solid level of ongoing staffing and funding, while others depend on the assistance of a professional staffer whose main obligations lay elsewhere. Still other commissions work solely through volunteers. The details of staffing and funding infrastructures are set out below.

**CHART 1: HOST ENTITIES WHERE ACCESS TO JUSTICE COMMISSIONS ARE LOCATED:**

| State Bar        | Court/AOC      | IOLTA/<br>Bar Foundation | Hybrid/Other         |
|------------------|----------------|--------------------------|----------------------|
| California # **  | Alaska         | Alabama                  | Colorado             |
| Louisiana #      | Arizona        | Arkansas                 | District of Columbia |
| Maryland*        | Connecticut    | Indiana                  | Florida              |
| Mississippi #    | Delaware       | Kentucky                 | Hawaii               |
| Nevada#          | Illinois       | Montana                  | Maine                |
| S. Carolina#     | Iowa           |                          | Massachusetts        |
| Texas#           | Kansas         |                          | New Hampshire        |
| Wash. State#     | Nebraska       |                          | Vermont              |
| Wisconsin#       | New Mexico     |                          | Virgin Islands       |
|                  | New York       |                          | West Virginia        |
|                  | North Carolina |                          |                      |
|                  | Oklahoma       |                          |                      |
|                  | Puerto Rico    |                          |                      |
|                  | Tennessee      |                          |                      |
|                  | Virginia       |                          |                      |
|                  | Wyoming        |                          |                      |
| <b>9</b>         | <b>16</b>      | <b>5</b>                 | <b>10</b>            |
| <b>TOTAL: 40</b> |                |                          |                      |

#Mandatory Bar

\*Effective 7-1-18

\*\*The State Bar of California is in the process of evaluating all of its subentities to determine whether to modify how the subentities operate or to terminate them altogether; the California Commission on Access to Justice is in the process of exploring staying at the bar, as well as other options for host entities at the time of publication.

**Note:** This chart indicates where key staff is housed or where the bulk of the commission’s work is undertaken.



**Host Entity:** Literally all access to justice commissions were established by supreme court order, or the state supreme court was involved with the establishment of the commission. Their members are often appointed in whole or in part by the supreme court. However, not all commissions are located within the judicial branch. Some are housed directly within the judicial branch while others have been set up within state bar associations or state bar foundations, often at the request of the state supreme court. Others are hybrids, having evolved somewhat independently but working closely with all key judicial branch stakeholders.

There are benefits and challenges that naturally come with each of these structures; however, the surprise is how similar the commissions are, despite the range of host entities.

**Court-Based Commissions.** There are sixteen access to justice commissions housed within the judicial branch - some within the state supreme court and others under the umbrella of an administrative office of the courts.<sup>8</sup> These court-based commissions have the benefit of a strong sense of legitimacy and clear support from the judiciary. Other commissions may also share that level of legitimacy because of the strong support of the supreme court, even if the commission is housed within the state bar or other entity. The court-based commissions also benefit from direct access to local courts and court staff, and their ability to work more readily with other statewide entities looking at ways to strengthen the judicial branch. These commissions may face the most limits on their activities, however, because of the sensitivity of the judicial branch and the ethical obligations of members of the judiciary, who may perceive potential conflicts and wish to avoid certain activities as a result.

**State Bar-Based Commissions.** There are nine access to justice commissions situated within state bar associations. These commissions tend to be among the highest funded and have the highest level of staffing, and they pursue a broad range of activities including increasing resources for legal services and improvements in the judicial branch. There are both benefits and challenges for commissions housed within the state bar, partly depending on whether it is a voluntary or a mandatory state bar. The unified state bars may have more secure funding but may be more wary of conflicts with the judicial branch or the legislature. Voluntary state bar associations may be worried about concerns from their membership about activities that solo practitioners perceive as being a threat. For example, some attorneys may fear the expansion of new limited scope representation rules, despite the fact that such rules can actually expand the number of low-income clients who can now hire an attorney for part of their case - individuals who could never afford an attorney before.

**Foundation-Based Commissions.** There are five access to justice commissions housed in the state bar foundation and/or the foundation responsible for overseeing IOLTA funding in that state. [IOLTA programs—or “interest on lawyer trust accounts”—exist in every state to provide funding for civil legal services to the indigent and disadvantaged. Sometimes the IOLTA entity is the state bar or the state bar foundation; elsewhere, it is a free-standing foundation dedicated to legal aid funding.] These foundations are a natural place to support access to justice commissions; however, they are usually much smaller entities, and sometimes lack the economies of scale or the connections provided by a larger institution such as the judicial branch or a state bar association.

**Hybrid/Other Commissions.** There are ten access to justice commissions that are either hybrids or more freestanding entities. Like other commissions, they were set up with supreme court involvement and the supreme court often appoints some or all commissioners. The hybrid commissions work closely with key judicial branch stakeholders, yet have great flexibility in the priority-setting process. [At least one, in the District of Columbia, has tremendous support from local bar leaders partly because of its independence and its resulting need for financial contributions, but it was set up by its highest court, the Court of Appeals in the District, and works closely with that court.] Like the foundation-based commissions, however, these hybrid entities may lack the financial support of a major institution that can help in lean times. Some commissions in this category have no staff support and operate mostly from the offices of the commission chair.

**Commission membership reflects involvement of key stakeholders:** All access to justice commissions involve representatives of the judiciary and the organized bar, and most have direct involvement from the legal services community, either as commissioners or as subcommittee members.

[Subcommittees can broaden the range of involved stakeholders and serve as a training ground for

future commissioners.] Many commissions have also reached out more broadly, to the business community, law schools, civic organizations, social services, legislative and administrative branches, the faith community and client representatives. Some commissions have all members appointed by the supreme court or other entity, while some give direct appointment power to other groups. Outside groups with appointment power may or may not have direct involvement with commission activities.

**Many commissions have also reached out more broadly, to the business community, law schools, civic organizations, social services, legislative and administrative branches, the faith community and client representatives.**

## CHART 2: GROUPS REPRESENTED ON ACCESS TO JUSTICE COMMISSIONS

|  |
|--|
| Supreme Courts   |
| Other Judicial Officers                                    |
| State Court Administrators                                 |
| Court Clerks   |
| State Bar Representatives                                  |
| Private Bar Leaders  |
| Legislative Representatives                                |
| Executive Branch Representatives                           |
| Business Leaders   |
| Law Schools  |
| Legal Aid Community  |
| Social and Human Service Organizations                     |
| Librarians, including County Librarians and Law Librarians |
| Client Community   |
| Civic Organizations, including League of Women Voters      |
| Community Groups   |
| Religious Groups   |

**Range of commission priorities and activities:** Each state presents a mix of challenges that affect access to justice commission priorities. Some states have strong court support with many access to justice initiatives in the branch, but inadequate funding for

civil legal aid providers; other states have somewhat more robust civil legal aid funding, but lack self-help centers in their courts or adequate language access within the judicial branch. It is the charge of each commission to determine their civil justice system's strengths and challenges and to develop a strategic plan for addressing the challenges and building on the strengths.

The details about how commissions conduct planning and implement priority projects are well covered in other publications. This brief overview

of commission work is included in order to put the need for an adequate funding and staffing infrastructure in context.

The core function of access to justice commissions is "to expand access to civil justice" through three primary functions: (1) assessing civil legal needs, (2) developing strategies

**It is the charge of each commission to determine their civil justice system's strengths and challenges and to develop a strategic plan for addressing the challenges and building on the strengths.**

to meet those needs, and (3) evaluating progress.<sup>9</sup> Each commission undertakes its own strategic planning to determine that state's most important priorities. Leadership is critical to how well this planning is undertaken, and whether the all-important evaluation step is taken seriously.

The types of strategies typically employed by access to justice commissions range from analytical and educational endeavors to initiatives that directly promote change on a statewide basis. They can be initiatives and strategies that address the public, the courts, the legal aid delivery system, or the need for increased resources, including funding and pro bono.

### **Case Study: Establishing Access to Justice Liaison in Each Local Trial Court Department**

The Massachusetts Trial Court initiated a pilot project testing the goal of having one person designated the Access to Justice Liaison ("A2J Liaison") in each trial court department. Nineteen court employees from 5 courthouses across the state volunteered their time to participate in the 6-month pilot. The A2J Liaisons in the pilot included front-line clerk and register staff, probation officers, a security officer, a Court Service Center staff attorney, a family law specialist, and a law librarian. They worked in large and small urban courthouses as well as small-town courthouses. The successful pilot culminated with each volunteer completing an A2J inventory of their courts and making recommendations about how to move forward throughout the Commonwealth. The broad areas covered in the inventory were:

- Helping Court Users Get Ready for Court
- Helping Court Users When They Arrive at the Courthouse
- Helping Court Users at the Counters
- Helping Unrepresented Litigants Navigate Court Proceedings
- Identifying Internal and External Resources to Help Court Users

This review of resources and obstacles in individual courthouses dovetails with the Massachusetts Access to Justice Commission's Justice For All (JFA) Strategic Action Plan, which identified issues of inconsistent access from courthouse to courthouse. The information gained from the pilot will be extremely valuable to the Commission as it continues efforts to implement the JFA Strategic Action Plan.

These liaisons will continue to facilitate access to justice in their courts and coordinate with colleagues across the state to share resources and program ideas, including collaboration with community organizations.

## Examples of access to justice commission activities and successes:

- **Increasing resources for the legal services delivery system.** Some of the most highly publicized commission successes involve increased state funding for the legal services delivery system. For example, the support of the New York Chief Justice was instrumental in obtaining \$100 million for civil legal services from the legislature in 2016. The Texas Access to Justice Commission, working with the state bar, the legal services community, and the IOLTA Foundation, raised legal aid funding to \$25 million in that state. The Wyoming Access to Justice Commission was able to shepherd through a filing fee increase that represented the first state funding of legal services in Wyoming and provides \$1.4 million annually for civil legal aid.
- **Publishing legal aid economic impact reports.** Commissions in Louisiana, Mississippi, and North Carolina have produced studies quantifying the direct and indirect economic impact of free civil legal services.
- **Coordination with administrative agencies.** Relying on the work done by the LAIR Project (Legal Aid Interagency Roundtable) at the U.S. Department of Justice, Office for Access to Justice, Commissions in Arizona and California and elsewhere have pursued legal aid funding through administrative agencies that fund the types of services legal aid programs offer.
- **Assisted self-help, court forms and services, and projects assisting people of modest means.** Most commissions have successfully pursued judicial system improvements. Details of many of these efforts are available at SRLN (Self-Represented Litigation Network) at [www.srln.org](http://www.srln.org). Montana established a court mediation program. Texas was able to change the rules for passing possessions outside of probate, to help self-represented litigants who were otherwise unable to appear without an attorney in probate court. Uniform rules and forms are much easier to develop and implement in states with unified court systems, but other states have also made progress in this area.
- **Unified intake and referral to an appropriate level of service (“triage”).** One of the most effective efforts commissions can support is the development of effective, coordinated delivery models so that those in need obtain the level of assistance they require. This needs to be a multi-faceted approach, involving all key stakeholders.
- **Language access and implicit cultural bias.** Commissions have been major players in the national effort to expand access to those with limited English proficiency, working with the judicial branch and local legal aid programs. For example, the California Commission on Access to Justice published a report in 2005 on the lack of language access with recommended solutions,<sup>10</sup> many of which have been implemented by the state court system.

## Case Study: Pursuing Full Access to Justice in One Pilot County

The New York State Permanent Commission on Access to Justice has developed a statewide action plan that includes a focused local effort to achieve full access to justice in one county, Suffolk County, which will serve as a pilot for other localities across the state. Suffolk County was selected, among other reasons, due to its mix of suburban and rural areas, high rate of foreclosures, large veterans and unaccompanied minor populations, and supportive legal community, including the judiciary, county bar association, law school and legal services providers. This effort, which was developed as part of the Justice For All (JFA) Strategic Planning process, will pursue the provision of effective assistance for the complete range of civil legal issues confronting Suffolk County's vulnerable communities.

The Commission, working closely with the local Administrative Judge, has created a robust committee structure at the local level to address the complete range of topics confronting communities throughout the state. Membership on these committees includes the full range of local stakeholders: legal services, courts, the private bar, law schools, local government, healthcare providers, social services, librarians, educators, foundations, advocacy organizations, etc. They are creating a roadmap addressing the many real challenges that have been, or will be, identified and then developing solutions. Recently underway is a collaboration among the county bar association, law school and providers, in partnership with a local public library, to create a legal resource center; implementation funds for this project were awarded by the JFA Committee in March 2018.

Building on the lessons learned to date from the establishment of the Suffolk County pilot, the Commission has embarked on another pilot in Monroe County, a large county in western New York that includes urban (city of Rochester), suburban and largely rural areas. It is anticipated that these two ambitious and creative pilots will spur similar local efforts around the state to expand access to effective assistance and are well worth watching.

- **Use of technology.** Commissions have helped expand user-centered websites, develop document-assembly systems for self-help centers, and expand electronic filing for court papers. The use of remote technology is particularly important in rural areas, and Alaska and Hawaii have been very creative in the use of remote access. Virginia, California, and many other states have established model self-help web portals. New York holds an annual technology conference.

- **Limited scope representation (“unbundling”)** . Many commissions have been involved with establishing limited scope rules for their civil courts, allowing those with limited means to receive the assistance of a lawyer for at least part of their case even if they cannot pay for an attorney to take on the entire litigation. In Arkansas, for example, the development of limited scope rules was seen as a win-win, since it helped improve access for those of modest means and it also brought positive attention to the supreme court. Similar experiences have occurred across the country.
- **Enhancing pro bono services.** Many commissions pursue pro bono projects. For example, the Massachusetts Access to Justice Commission has partnered with the “Massachusetts Access to Justice Fellows Program,” where retired partners or retiring judges have volunteered over 80,000 hours, assisting legal services organizations, nonprofits, and courts for a one-year, part-time pro bono commitment. Louisiana and Washington, D.C. have launched similar programs. North Carolina has regional pro bono councils to support pro bono attorneys.
- **Coordinating with law libraries and community libraries.** This has been a productive strategy in California, Illinois, and Maine, in particular. So many unrepresented litigants appear at libraries, rather than at courthouses, and librarians have developed a variety of resources to help these vulnerable individuals who lack the resources to hire an attorney.
- **Developing initiatives with other stakeholders.** Several commissions have developed strong networks with other stakeholders and have pursued initiatives to expand access to justice. For example, Tennessee established the Faith and Justice Alliance, and Washington State is a key player in the Race and Equity Justice Initiative. Some Commissions work with the tribal communities, including Wyoming’s Tribal Working Group.

### **Case Study: Local Access to Justice Committees Promote Access to Justice at the Local Level**

The Colorado Access to Justice Commission established a statewide network of local access to justice committees in twenty-one of the state’s twenty-two judicial districts. While each judicial district determines its own membership, the Access to Justice Commission has emphasized the importance of having at least one judge as a member. Other members of local committees include private attorneys, pro bono coordinators, self-represented litigant coordinators (sherlocks), and representatives of nonprofit organizations, such as domestic violence shelters.

**Local Access to Justice Committees Promote Access to Justice at the Local Level** CONTINUED

Each local committee establishes its own priorities to enhance access to justice in its judicial district. During the last two years, many local committees have hosted legal resource days, rural resource days, or family law resource days. Additionally, local access to justice committees organized statewide hearings in 2007 and 2013 to publicize access to justice activities in local communities.

Representatives of local access to justice committees participate in bimonthly one-hour statewide telephone meetings, which provide an opportunity for representatives of local committees to share information and learn about successful projects undertaken throughout the state. Most local committees operate without a budget, but some receive modest funding from local bar associations or in-kind donations.

When Colorado was chosen as one of seven states to receive a strategic planning grant through the Justice for All Project, its consultant visited many of the local committees and found that they were fonts of information concerning local access to justice activities. More recently, the Colorado Access to Justice Commission received a follow-up JFA implementation grant, the focus of which is to undertake efforts in two judicial districts – one urban and one rural – through local access to justice committees, to enhance access to justice efforts.

**The role of access to justice commissions with regard to increasing legal aid funding.** It is not necessary for access to justice commissions to take primary responsibility for all key “access to justice” functions, such as increasing legal aid funding, as long as there is some institution taking responsibility for each key function. It is clearly important to evaluate the success of that activity, and ensure that the institution responsible has the capacity to do so in an effective way, with both accountability and transparency.

Most states have a clearly designated entity responsible for increasing resources for the legal services delivery system, with the access to justice commission playing an active role, or at least monitoring the progress of this effort. A few court-based commissions are very involved with increasing resources for the delivery system, through support for legislation or targeted funding through the state budgetary process. However, other court-based commissions are not directly involved with such efforts, although commissioners may do so in their individual capacity. State bar-based commissions are the most active with regard to legal aid funding.

**Resources:** For more details on access to justice commissions, the ABA Resource Center for Access to Justice Initiatives maintains an extensive online library including materials relating to the creation and composition of commissions, as well as a directory of all commissions; these materials are available at [www.atjsupport.org](http://www.atjsupport.org).<sup>11</sup>

**CHART 3: YEARS THAT COMMISSIONS WERE ESTABLISHED**<sup>12</sup>

*(Some have been superseded by a second commission or otherwise changed structure.)*

|  |  |   |   |
|--|--|---|---|
| <p><b>1994 to 1996:</b></p> <ul style="list-style-type: none"> <li>• Washington State</li> <li>• Maine</li> <li>• California</li> </ul> <p><b>2001 to 2004:</b></p> <ul style="list-style-type: none"> <li>• Texas</li> <li>• Arkansas</li> <li>• Colorado</li> <li>• New Mexico</li> <li>• Vermont</li> </ul> | <p><b>2005 to 2007:</b></p> <ul style="list-style-type: none"> <li>• District of Columbia</li> <li>• Massachusetts</li> <li>• North Carolina</li> <li>• Mississippi</li> <li>• Nevada</li> <li>• Alabama</li> <li>• New Hampshire</li> <li>• South Carolina</li> </ul> | <p><b>2008 to 2011:</b></p> <ul style="list-style-type: none"> <li>• Hawaii</li> <li>• Maryland</li> <li>• Wyoming</li> <li>• Tennessee</li> <li>• West Virginia</li> <li>• Wisconsin</li> <li>• Kansas</li> <li>• Kentucky</li> <li>• New York</li> <li>• Connecticut</li> </ul> | <p><b>2012 to 2014:</b></p> <ul style="list-style-type: none"> <li>• Florida</li> <li>• Illinois</li> <li>• Montana</li> <li>• Delaware</li> <li>• Indiana</li> <li>• Virginia</li> <li>• Puerto Rico</li> <li>• Oklahoma</li> <li>• Arizona</li> <li>• Virgin Islands</li> <li>• Alaska</li> </ul> <p><b>2015 to 2017:</b></p> <ul style="list-style-type: none"> <li>• Louisiana</li> <li>• Iowa</li> <li>• Nebraska</li> </ul> |
|--|--|---|---|

## PART III: STAFFING OF COMMISSIONS

Adequate staffing is essential for vital, effective access to justice commissions:

Adequate and effective staffing is necessary to provide Access to Justice Commissions with support, continuity, communications, and continued momentum. The skill, ability, and energy level of a Commission's staff are essential to the success of the Commission's effort. Effective staffing 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.<sup>13</sup>

**Responsibilities of commission staff directors/coordinators.** Commission staff need to be effective at multi-tasking. They are responsible for a broad range of activities, including the following:

- Executive staff work for the access to justice commission and supervision of other staff;
- Planning, implementing and evaluating programs, ensuring policy issues are approached thoughtfully and analytically;
- Internal management, reporting, and budgeting;
- Planning and evaluation of all uses of technology for administration and projects;
- Fundraising and grant administration;
- Liaison to host organization, as well as to judicial branch, bar associations, legal services community, and all key stakeholders; and
- Outreach to promote the visibility of the commission and its key messages, including websites and social media.

Obtaining the ongoing funding necessary for adequate staffing is a high priority for access to justice commissions. The work of a staff director can have a multiplier effect, since they can reach out to other staff at the host institution as well as to staff at partner agencies. It is ideal if supporting the work of the commission is the staff person's primary or sole obligation, and if they report directly to commission leadership.

**Four major staffing models.** The most common commission staffing model has staff located at (and funded by) a partner institution—usually the courts, the state bar, or the bar foundation. This model provides staff

**The work of a staff director can have a multiplier effect, since they can reach out to other staff at the host institution as well as to staff at partner agencies.**



involvement with leadership for the commission, as well as a level of continuity and institutional memory that can multiply the impact of the commission. This staffing model occasionally creates complications where staff report to the commission but are employed by the other entity. In addition, such an arrangement may sometimes hamper the independence of the commission on specific topics. Commissions may be required to seek additional approvals from another entity, such as the supreme court or a state bar board of directors, before taking a certain position or pursuing a new project. The approval process can result in delay or in a rejection of the proposed commission action. Nevertheless, these issues can generally be worked through, and this staffing arrangement has proven effective in most states.

While it is a comfortable position to have the staffing and operational needs addressed, these commissions need to be sure to plan for lean times when the host entity may not be as able to provide the same level of staffing. [Note that there is a small number of freestanding “hybrid” commissions with dedicated staff who are not housed within a host institution.]

The various staffing models around the country can be summarized as follows:

- **Multiple staff, supervised by commission director/coordinator.** In this model, with more than one staff person, the main commission director provides the leadership and primary support and guidance for the commission that can only come from professional staff. Other staff can include additional staff counsel or professional coordinators working on specific commission activities, as well as administrative support. The ten commissions with this staffing model include Arkansas, California, Florida, Illinois, Louisiana, New York, North Carolina, Tennessee, Texas and Washington state.
- **Approximately one full-time staff (sometimes filled by more than one individual).** The Commissions using this model have one full-time employee (FTE), sometimes a full-time director who provides leadership and support for the commission and for commission projects, and sometimes by a combination of staff totaling approximately one FTE. Where the director is one full-time person, they have the opportunity to provide good oversight of the activities of the commission, and can offer their full attention to supporting the commission. Where there is more than one staffer, they are able to take advantage of the skills of the various staff members. The twelve commissions with this staffing model include Alabama, Arizona, the District of Columbia, Hawaii, Indiana, Kentucky, Maryland, Mississippi, Nevada, New Mexico, South Carolina, and Virginia.
- **Part-time commission director/coordinator.** In this model, the staff director or coordinator can provide leadership and support for the commission, particularly in smaller states, but also has other obligations. It is often necessary to supplement

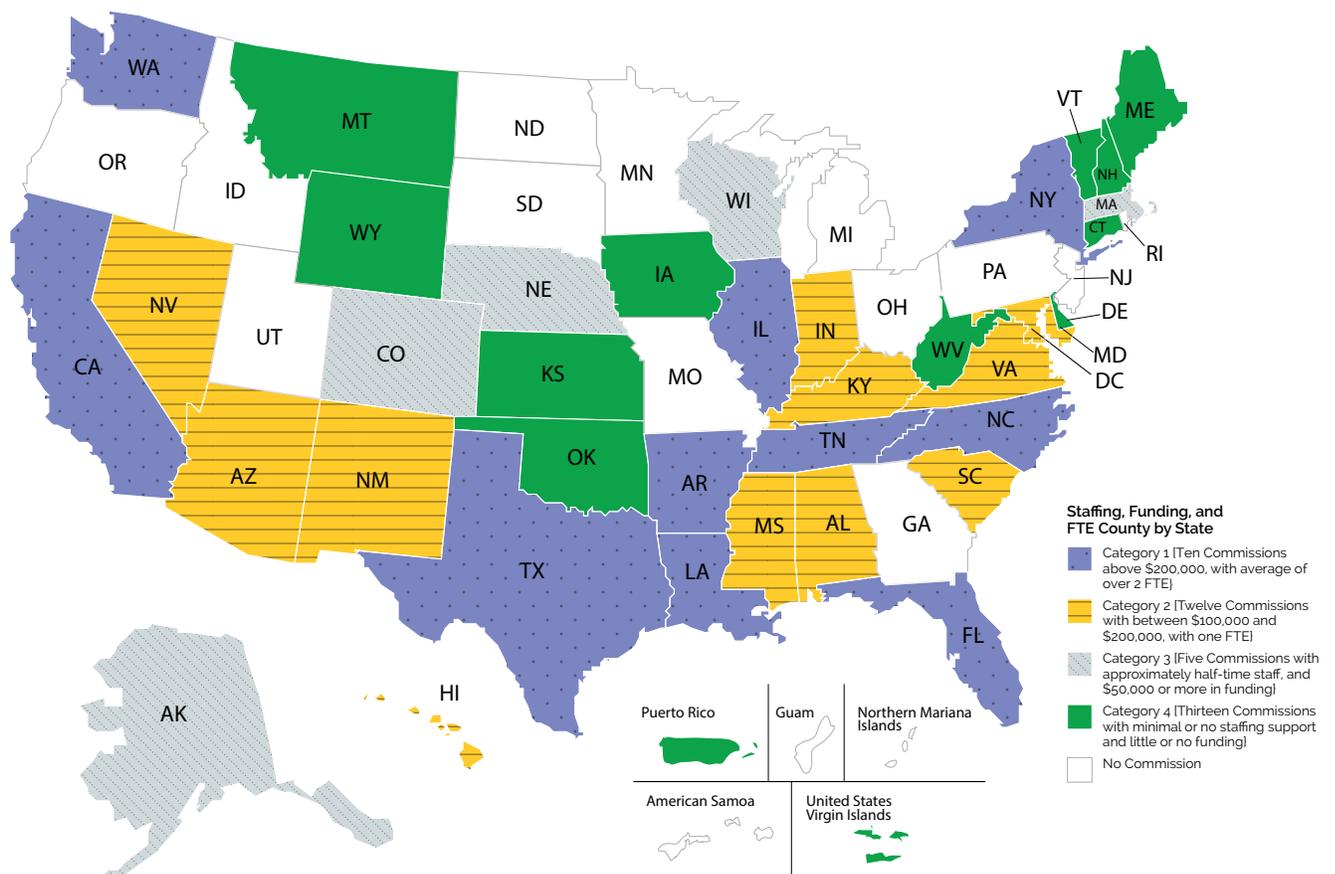
the work of the part-time commission coordinator with some in-kind and/or volunteer staffing, which is invaluable, as it allows the commission to get most of its operational needs filled. However, commissioners need to be aware of the many other pressures on the staff director/coordinator, and the difficulty staff members face when trying to ensure quality control. There is also a tremendous increase in the time and energy it takes to coordinate with volunteers or in-kind staff provided by another institution. This model also raises many challenges, such as whether commission leadership has any role in the hiring and ongoing evaluation of the work of the staff person, and what priority the commission's work has vis-à-vis the staff director's other responsibilities. There may also be a lack of continuity, when the director role is reassigned, with or without input from the commission. The five commissions with this staffing model include Alaska, Colorado, Massachusetts, Nebraska and Wisconsin.

#### CHART 4: COMMISSIONS BY LEVEL OF STAFFING AND FUNDING

| <b>CATEGORY ONE:<br/>COMMISSIONS ABOVE<br/>\$200,000 with Average<br/>Staffing over 2.0 FTE's<br/>(10 Commissions)</b> | <b>CATEGORY TWO:<br/>COMMISSIONS WITH<br/>APPROXIMATELY<br/>\$100,000 OR NEARLY<br/>FULL-TIME STAFFER<br/>(12 Commissions)</b> | <b>CATEGORY THREE:<br/>COMMISSIONS WITH<br/>APPROXIMATELY<br/>HALF-TIME STAFF AND<br/>\$50,000 TO \$100,000<br/>(5 Commissions)</b> | <b>CATEGORY FOUR:<br/>COMMISSIONS WITH<br/>MINIMAL OR NO<br/>STAFFING SUPPORT<br/>AND LESS THAN<br/>\$50,000<br/>(13 Commissions)</b> |
|--|--|---|---|
| Arkansas   | Alabama  | Alaska  | Connecticut   |
| California   | Arizona  | Colorado  | Delaware  |
| Florida  | District of Columbia   | Massachusetts   | Iowa  |
| Illinois   | Hawaii   | Nebraska  | Kansas  |
| Louisiana  | Indiana  | Wisconsin   | Maine   |
| New York   | Kentucky   |   | Montana   |
| North Carolina   | Maryland   |   | New Hampshire   |
| Tennessee  | Mississippi  |   | Oklahoma  |
| Texas  | Nevada   |   | Puerto Rico   |
| Washington State   | New Mexico   |   | Vermont   |
|  | South Carolina   |   | Virgin Islands  |
|  | Virginia   |   | West Virginia   |
|  |  |   | Wyoming   |

- Limited or no staff support.** In this model, a host entity may provide a few hours a week from a staff person who is able to set up meetings, keep commission records, and/or serve as liaison between the commission and the institution. However, the commission is not the staff person's primary obligation, and they cannot put more time into commission activities even if they want to. Commissioners need to be cognizant of the limits on the staff person's time, and must take responsibility for fulfilling all the functions of a successful commission, since the staff person usually cannot do so. It is necessary to have other in-kind and/or volunteer staffing to supplement or replace regular staff, and the chair often takes on a huge level of responsibility for the administrative functioning of the commission. The thirteen commissions with this model include Connecticut, Delaware, Iowa, Kansas, Maine, Montana, New Hampshire, Oklahoma, Puerto Rico, Vermont, Virgin Islands, West Virginia, and Wyoming.

### MAP: STAFFING, FUNDING, AND FTE COUNT BY STATE





## Two valuable clarifying documents.

- **MOU between commission and host entity:** Many commissions have found it helpful to have the parameters of the arrangement between the commission and host entity clearly spelled out, whether in an MOU (Memorandum of Understanding), by-laws, or otherwise. Such an agreement should cover the administrative, operational, financial and communication expectations for the functioning of the commission vis-à-vis the host entity. A key component of such an understanding would address the role of the commission staffers. Does the commission have input on the annual evaluation of the staff person? On the hiring of new staff members? How do difficulties get addressed if and when they arise? [Sample agreements are available through the ABA Resource Center for Access to Justice Initiatives.]
- **Document clarifying roles of staff and commissioners.** This second document should clarify staff roles and responsibilities with regard to commission activities, and specify when the commissioner leadership takes responsibility. How do issues get addressed? Some commissions have job descriptions for commissioners, and this document could be expanded to include both staff and commissioners. [Again, sample agreements are available through the ABA Resource Center for Access to Justice Initiatives.]

**Peer support.** Experience has shown that the commission staff function is tremendously rewarding but can also be a somewhat isolated role, and it is valuable to develop strong ties to commission staff in other states. Only through a network of peer support can commission staff obtain the guidance they often need to address the many unusual challenges of being a commission staffer. It can be difficult to have two masters, particularly in states where there are few resources and the staff person has many other obligations. Other staff at the host entity may not understand the unusual level of commitment the commission staffer has to the commission's mission and volunteers. With a strong connection to commission staff in other states, a commission coordinator can obtain support and technical assistance relating to their unusual position, support that can improve their job performance and improve the work of the commission itself.

A great resource to obtain peer support is through the ABA Resource Center for Access to Justice Initiatives, which offers a monthly roundup of news, technical assistance in forming a commission, assistance in strategic planning, quarterly national calls to permit staff to share knowledge and experience, an annual national meeting of commissions, a large web-based library of materials, and other ongoing support for staff and chairs of access to justice commissions.

## PART IV: SIX LESSONS FOR SUCCESSFUL FUNDING OF COMMISSIONS

Most people can think of many other things they would prefer to do than fundraising. However, because of the importance of developing adequate ongoing resources to support the work of the access to justice commission, this task should be of the highest priority and be undertaken by commission leadership.

Ideally, commission operating funding is ongoing and a source of stability. Diverse sources of funding are also ideal, since they are more likely to be available to help a commission ride out lean periods. The funding source should provide a level of independence for the commission, without the sort of control or restrictions that can keep a commission from fulfilling its mission.

The level of funding needs to be adequate to cover staffing and basic operating expenses of the commission. In-kind services, such as part of the time of a court or bar employee, should be explored as a way to at least cover basic commission needs, particularly at the outset.

While it is not always possible to meet all these goals, commission leadership needs to weigh the pros and cons of various sources of funding before determining the right course of action. [Note that while most of these key lessons are also applicable to fundraising for the legal aid delivery system, legal aid funding is not the focus of this report.]

### 1. Organizational long-term planning is key first step

Planning is just as important for establishing operational funding as it is for all other access to justice commission activities. And being responsible for the fiscal stability of the commission is one of the key roles of commissioners. Commission leadership

needs to develop a strategy to ensure that the operational resources are there for the long-term stability of the commission, possibly setting up a three- to five-year fiscal plan. Resource development planning starts with a clarification of the commission's mission and goals, followed by the identification of the resources needed to achieve those goals.

**Commission leadership needs to develop a strategy to ensure that the operational resources are there for the long-term stability of the commission, possibly setting up a three- to five-year fiscal plan.**

Sometimes, a short-term funding source will allow the commission to get established and begin functioning before it needs to identify the source(s) of ongoing commission



support. As the new commission launches its activity and is able to achieve a few initial goals, that track record can help attract ongoing funding.

Commission leadership should bring on a broad range of supporters as part of its resource development team. Who on your commission has fundraising experience and is willing to help? In addition to commissioners and advisory committee members, other key stakeholders should be involved in the planning effort: liaisons to the judicial branch, the private bar, law schools, the legal aid community, business and civic leaders, and librarians and social services.

It needs to be understood that developing stable financial resources for an access to justice commission is a way to allow others to share in the success of your commission. Rather than seeing it as a typical fundraising task, it is more appropriate to think of it as establishing partnerships with others sharing your goal of achieving true access to justice. And while there are untold numbers of guides, manuals, workshops, and YouTube videos on fundraising, they should supplement a long-term development strategy grounded in the mission of an access to justice commission and informed by the experiences of commission leadership across the country.

## **2. Solutions to potential barriers**

Planning should include a discussion of how to overcome anticipated barriers. Is it difficult to obtain ongoing funding for operational needs because foundations prefer to fund short term special projects? Is there a fear of competition with groups they want to help? The dynamics in each state are different, so a local analysis is necessary to determine where the commission might encounter resistance. How can these concerns be addressed, and who should approach these various institutions on behalf of the commission? Note that where there is initial resistance to a proposed funding mechanism, that resistance usually fades once the funding system is in place.

**The Judicial Branch.** For court-based commissions, branch leadership may be reluctant to have the commission pursue funding for its own staff or special projects. Commissions should understand the reasons for this reluctance, such as where there may be ethical constraints on fundraising. If there is a sense that it is inappropriate for commissions within the branch to do any fundraising, even legislative fundraising that does not involve ethical restrictions, then perhaps another institution within the broader access to justice community can take the lead to do fundraising for an activity with which the commission is involved as one of many partners.

If the judicial branch has other priorities, which is often true given the underfunding of courts across the country, then an honest discussion with

### **Case Study: Separate Foundation Established To Expand Resources and Legislative Support**

The Oklahoma Access to Justice Commission established a separate foundation to help it achieve its goals. The Oklahoma Access to Justice Foundation has been launched and, at press time, was awaiting confirmation of its 501(c)(3) status.

The goal of the Foundation is to be the resource engine for the Commission and to be the active partner with the Commission in facilitating access to justice, using both fundraising and legislative advocacy.

The Commission approved the creation of the Foundation, and leadership of the Foundation includes strong Commission representation.

The Foundation submitted a grant to the Oklahoma Bar Foundation and plans to also seek financial support from the Chickasaw Nation. A statewide campaign is in the works, as well as plans to be a grant-making entity. The Oklahoma legal services community has been supportive of this development.

branch leadership may be appropriate. The small amount of operational funding devoted to the commission can result in increased resources for the judicial branch, such as increased support for self-help centers, language access activities, or improved e-filing capabilities.

Some states have avoided potential conflicts by using a structure whereby the court provides in-kind support for all commission activities, removing the necessity of the commission doing any fundraising for itself. However, for commissions lacking adequate staff support where in-kind support is not possible, and there is no way for the commission to obtain the funding it needs as a result of being part of the judicial branch, then perhaps the commission can be set up as a quasi-independent body, which has been done in some states.

**Legal Aid Community.** Support for access to justice commission funding from the leadership of the legal aid community is extremely important, particularly for foundations that may have longstanding relationships with legal aid. Some commissions have encountered subtle or not-so-subtle reluctance from the legal aid community, which fears competition for scarce resources if the commission seeks independent funding. By getting the legal services community actively involved with the commission and its resource development planning, they may come to understand that the commission is pursuing strategies to "raise all boats"

and that the legal aid community and its clients will benefit in the long run. The operating needs of commissions are relatively small, and honest discussions can clarify which funding sources might be good targets for the commission and which areas need to remain as only funding for the legal aid delivery system. Perhaps there are sources of funding that they have never been able to obtain that are ideal for the commission, such as a foundation that does not support any nonprofits involved with litigation. Or perhaps, working together, the commission and the legal aid community can develop sources of funds for the legal services delivery system, such as filing fees, *pro hac vice* fees, or voluntary bar membership fee add-on, and a small part of this new funding can be dedicated to the ongoing work of the commission.

**By getting the legal services community actively involved with the commission and its resource development planning, they may come to understand that the commission is pursuing strategies to “raise all boats” and that the legal aid community and its clients will benefit in the long run.**

This kind of problem-solving before the commission gets very far along in its fundraising planning can help prevent unexpected roadblocks at unfortunate points in the campaign.

### **3. Identify all potential sources of support**

The next step in the resource development campaign is to identify all possible sources of support for the commission's operational needs. It is tempting to jump at the first source identified, but thoughtful planning will pay off. This list should include both direct funding sources and in-kind support from a key institution, such as the judicial branch, law firms, law schools, the state bar and state bar foundation, and others. [Please refer to the section below that includes information on how commissions are funded.]

Private philanthropy and the business community, where relationship development is key, should both receive serious attention. Access to justice commissions pursue solutions to issues that are foundation priorities. Although they may not see the connection immediately, there are great opportunities for collaborative efforts to address shared concerns. Likewise, members of the business community often share concerns about the civil justice system and they can be great partners in civil justice reform efforts.

**Private philanthropy and the business community, where relationship development is key, should both receive serious attention.**

As part of this process, analyze how related groups are funded in your state, including other state committees such as a committee on professionalism. Can their funding source be increased and then extended to support your commission? Or are there similar types of funding mechanisms that could be tapped for your operational needs? This is obviously delicate and needs to be approached in a collaborative way to avoid opposition.

In determining the potential success of each source identified, and the amount of funding that could be raised, you must also balance the pros and cons of each potential revenue source, and determine whether they could have an impact on the independence of the commission. What is your strategy for addressing requests for matching funds? Is there a source of funding that might be willing to put up matching funds in order to help the commission obtain financial stability?

As noted elsewhere, it is important to consider the option of working with other stakeholders to develop new funding sources for legal aid, having agreed ahead of time to set aside a small part of that new funding to support the ongoing work of the commission. In that way, the commission has the stability to be able to continue to support legal aid and the entire access to justice delivery system.

#### **4. Communications, clear messaging and outreach**

Careful thought needs to be given to the ways your commission's mission and goals are publicized as part of the resource development campaign. Your commission's

"branding" needs to be done in a strategic, effective way. This includes both the message that you convey as well as the ways you conduct your outreach. It can be very challenging for a commission to distinguish between building support for its own funding and existence, and promoting funding and resources for the civil legal aid system as a whole.

Good model materials are available through the ABA Resource Center for Access to Justice Initiatives ([www.atjsupport.org](http://www.atjsupport.org)) as well as Voices

for Civil Justice (<https://voicesforciviljustice.org>)

**One of the great strengths of access to justice commissions is that they involve a broad range of groups concerned about access to justice. Those groups, in turn, have access to a greater range of potential supporters.**

It is important to reach out to all key supporters, beyond the usual suspects. One of the great strengths of access to justice commissions is that they involve a broad range of groups concerned about access to justice. Those groups, in turn, have access to a greater range of potential supporters. Commissions should take advantage of this great network to reach funders who might not be obvious at first.



A special focus on websites and public media is appropriate here, and an online presence has come to be expected. The websites of all access to justice commissions can be found at [www.atjsupport.org](http://www.atjsupport.org). While many commissions have effective websites, the websites set up in North Carolina, Texas, Washington D.C. and Washington state are particularly informative and compelling, and are good models to consider.

### **5. Leadership role to implement fundraising strategy**

After making sure that you have the assistance of experienced fundraisers, you are ready to implement your strategic fundraising plan. Be sure that commission leadership meets with potential funders, where possible, and bring in support from leadership of the legal aid community as well. This is especially important for private philanthropy and the business community.

Approach potential funders as partners in the effort to achieve access. This can be a very effective approach and you may discover that they want to be involved in your activities on an ongoing basis. Be sure to coordinate with all your key stakeholders in the implementation of your fundraising strategy. If all the groups involved with your fundraising do not worry about who gets credit, then together you can focus on the true goal: long-term stability for the access to justice commission.

### **6. Evaluation and follow up**

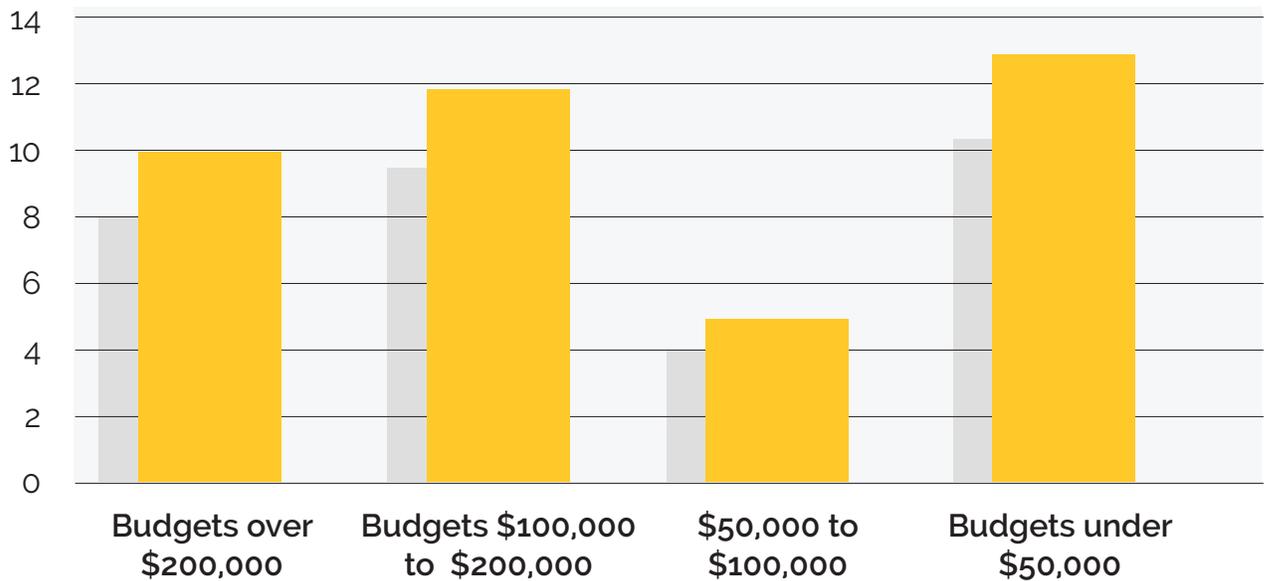
Periodic review of fundraising efforts is essential. What is working and what isn't? Review the planning steps and the list of possible sources identified earlier, to be sure that nothing was left off, and to add new sources that have emerged, or new supporters who could take the lead to make a crucial contact.

On an ongoing basis, commissions should keep funders and other supporters informed of and involved with commission activities; in that way, they can feel some ownership in the commission goals and successes, to everyone's benefit.

## PART V: OVERVIEW OF FUNDING SOURCES AND IN-KIND SUPPORT USED BY COMMISSIONS

The following sources of funding are listed by the type of host entity. The list includes both direct funding and in-kind support available to access to justice commissions. Please note that the source of funding is not necessarily dictated by where the commission is housed, but the more common patterns are included here.

**CHART 5: COMMISSIONS BY BUDGET LEVEL**



- **Supreme Courts or Administrative Office of the Courts (AOC):** Most of the sixteen access to justice commissions housed within a state supreme court or an AOC do not need to conduct fundraising for their own operating budget, since their basic operating costs are covered in the same way that other judicial committees are covered. A few of these court-based commissions do undertake limited fundraising for special projects, such as public hearings or an outreach campaign. This fundraising is often done in conjunction with other stakeholders involved with the commission, and one of those other stakeholders may take the lead to serve as financial sponsor for purposes of any grant proposals or other fundraising. Commission members may be involved with fundraising in their individual capacity.

While some commissions have a separate budget item, most court-based commissions are supported by court staff, and there is no separate line item for the commission and no separate source of funding for the commission's activities other than general operating funding.



Some court-based commissions do have a separate source of funding for part or all of their activities. These include Tennessee, which receives funding from CLE fees for lack of compliance, and Illinois, which receives funding from Westlaw and Lexis for both online and print pattern jury instruction royalties, among other sources.

- **State Bar Associations:** Nine commissions are housed within state bar associations, and most of these have their expenses covered by the general funds of the bar association. Unlike the court-based commissions, the commissions within bar associations often have a separate identified budget.

The bar association-based commissions often supplement state bar support with funding from other sources, including short-term and targeted sources such as private foundation grants. Others, such as Florida, receive in-kind support from the AOC while the commission is housed at the state bar. Other bar-based commissions have established targeted funding sources to support the commission's expenses. For example, in North Carolina, the work of the commission is covered by a small CLE fee, and in Wisconsin, the commission receives some pro hac vice fees. State bar sections have even provided limited support for a commission activity, such as in Wisconsin, where the Family Law Section provided a small grant for a few years. In other states, state bar sections may co-sponsor special projects and contribute to those expenses.

- **IOLTA Foundation and/or State Bar Foundation:** Five commissions are housed within state bar foundations or another foundation that is responsible for IOLTA in that state. For some, their operational funding comes directly from general foundation resources. However, these foundations often have restrictions imposed by their funding source. Thus, they may be prohibited from using some or all of their grant funds for an access to justice commission.

Ideally, the commission will be able to identify a new source of targeted funding for commission staffing so it will not be perceived as competing for funding that would otherwise go to direct services. Some commissions have worked to identify new funding for the legal aid delivery system and a small part of that new funding source is devoted to ongoing operational support for the commission. These sources can include pro hac vice fees, filing fees, or attorney-check off contributions. In Arkansas, attorney license fees support the commission, as directed by the supreme court. While the Arkansas Supreme Court pays for the salary and benefits, as well as meeting expenses for the foundation-based commission, the foundation pays for all other operational expenses including space and equipment.

- **Hybrid Commissions:** Ten commissions are identified as “Hybrid/Other.” Like other commissions, they are established or supported by the highest court in the jurisdiction, but are housed elsewhere. These commissions rely on a range of funding sources. For example, in Washington, D.C., the commission receives significant private bar support, both funding and in-kind support, and the commission staff is housed within a private law firm. These commissions also pursue private foundation grants, and some have received law school support. One creative approach used in Maryland, when it was a hybrid commission based at a law school, was to establish a membership system, with key stakeholders providing financial support for the operational needs of the commission.

**Types of In-Kind Support:** In addition to funding, there are many ways that the work of an access to justice commission can be advanced through in-kind support. This often involves a staff person at a host entity or other stakeholder taking responsibility for a specific commission task on an ongoing basis or for a special project. It can also take the shape of offering space, equipment, printing, publicity, legislative representation, or technical support. Providing short-term assistance through fellowships is also extremely valuable. Commissions have received in-kind support from the judicial branch, bar associations, legal aid programs, law schools, libraries, private firms, and churches.

**Special project funding:** Pursuing funding for special projects can fit within any institutional framework. There are a variety of possible sources for special project funding, including all the normal funding options described in this report as well as special grants, such as those available through the State Justice Institute ([www.sji.gov](http://www.sji.gov)) and mini-grants periodically available through the American Bar Association. Wherever an entity is unable to serve as the fiscal sponsor and/or needs to avoid direct involvement in fundraising, other stakeholders can take the lead to obtain the funding and help implement the project.

- In South Carolina, the Commission obtained special grants to conduct public hearings on the need for increased access to the civil justice system.
- Numerous states have obtained specific technology grants to establish user-centered websites, develop document-assembly systems for self-help centers, or expand electronic filing for court papers, and the commission has supported and helped develop these efforts. The Legal Services Corporation (LSC) is a primary source of this technology funding through their Technology Improvement Grant Program (“TIG”) (see <https://www.lsc.gov/grants-grantee-resources/our-grant-programs/tig>).
- In California, the commission raised foundation funding to be able to offer small grants for local bar associations and law schools setting up incubator projects; these incubators supported recent graduates as they learned how to establish a law practice focused on serving a modest means clientele.

## CHART 6: SOURCES OF FUNDING AND IN-KIND SUPPORT FOR COMMISSIONS

| Sources of Funding and/or In-Kind Support:  | Examples of States Using Each Source: (Please note that these Commissions may not currently have all of these funding sources.)                                     |
|---|---|
| Supreme Courts or Administrative Office of the Courts   | Alaska, Arizona, Connecticut, Delaware, Illinois, Iowa, Kansas, Nebraska, New Mexico, New York, North Carolina, Oklahoma, Puerto Rico, Tennessee, Virginia, Wyoming |
| State Bar Associations (or state bar sections)  | California, Louisiana, Maryland, Mississippi, Nevada, South Carolina, Texas, Washington State, Wisconsin  |
| IOLTA Foundation and/or State Bar Foundation  | Alabama, Arkansas, Indiana, Kentucky, Montana   |
| Attorney License Fees   | Arkansas  |
| Private Bar support   | North Carolina; Washington D.C.; Washington State (for biannual conference)   |
| Private foundations   | California; Maryland; North Carolina; South Carolina; Virginia; Washington D.C.   |
| Corporations  | South Carolina; Washington D.C.   |
| Law Schools   | Maryland, West Virginia   |
| Libraries   | Virginia  |
| Events  | Tennessee; Washington State   |
| CLE fines or fees*  | North Carolina; Tennessee   |
| Filing Fees*  | Hawaii  |
| <i>Pro hac vice</i> Fees*   | Hawaii; Illinois; Mississippi; Wisconsin  |
| Model Rule 6.1 (lawyers encouraged to do pro bono work and contribute to legal aid)*  | Mississippi   |
| Memberships*  | Maryland  |
| Pattern Jury Instructions*  | Illinois  |
| Veterans Grant through the ABA*   | North Carolina  |
| State Justice Institute Grant*  | Nebraska  |
| * <i>Note further details below</i>   |   |
| <b>Other Potential Sources/Fundraising approaches:</b> <ul style="list-style-type: none"> <li>• Attorney General funding through litigation settlements, such as foreclosure funds</li> <li>• Unclaimed property within judicial systems (litigant funds)</li> <li>• Endowments</li> <li>• Developing source to use when Matching Funding required</li> </ul> |   |

## Additional Details on Potential Funding Sources for Access Commissions:

**CLE Fines or Fees:** Commissions in two states—North Carolina and Tennessee—were able to obtain funding for the work of the commission from a small fee added to CLE events or from the fines paid by attorneys failing to comply with CLE requirements. In both cases, the CLE funds were already being used to support other statewide committees or commissions, and modifying the allocation system and slightly increasing the amount has led to an important stable source of funding for those commissions.

**Filing Fees:** How filing fee revenues are allocated is a very complex and sensitive topic around the country, given the lack of adequate funding for the judicial branch. However, some filing fees are used to support access to justice. Hawaii's IOLTA Foundation, which provides some administrative support for the access to justice commission, receives an allocation of the state court's filing fees to support the work of the Foundation. There are several states that provide some of their filing fee monies to support the provision of free legal services to the poor, and thus these fees fall into the category of funding that may cause a conflict with the legal aid community.

**Pro Hac Vice Fees:** Some commissions, including Hawaii, Illinois, Mississippi, and Wisconsin, receive a portion of the *pro hac vice* fees paid in that state. These fees are paid by attorneys who don't conduct regular business in a state but want to represent a client on a specific case. They petition a court for permission to appear for that limited purpose. The licensing entity uses some of the fees to pay for oversight of the process, but normally there are still funds available to support various activities, including access to justice efforts.

**ABA Model Rule 6.1:** Many states have adopted the ABA's Model Rule 6.1, encouraging attorneys to do pro bono work as well as to contribute to legal aid. While the contributions received in each state are often modest, and they tend to decline with time, they are used primarily to support free civil legal aid. In Mississippi, some of those funds are used to provide a portion of the operating costs of the access to justice commission. The system was put in place at a time when the commission helped establish a variety of funding sources for the civil legal aid community, and a small part of those funds raised were dedicated to supporting the commission so that it could continue to do its work on behalf of the legal aid delivery system.

**Memberships:** Maryland developed a membership system whereby institutions represented on the Commission paid annual dues to be "members" of the Commission. This model fostered cost-sharing and allowed for some financial stability for the Commission. A range of organizations—legal aid programs, law firms, law schools, the Attorney General's office, and the IOLTA program—paid dues to the Commission at their own level of comfort, although requests were pegged to an organization's annual



budget. The Commission received \$49,500 in dues that ranged from \$500 to \$10,000 from twelve out of the sixteen organizations represented on the Commission. The Commission raised the remainder of its budget through law firm and corporate counsel campaigns and through gifts from individual donors and grants from foundations. The Commission may explore expanding membership to other individuals and institutions that support the vision of civil justice for all.

**Pattern Jury Instructions:** The Illinois Supreme Court Access to Justice Commission receives some funding as a result of royalties paid by Lexis and Westlaw for pattern jury instructions, both print and online.

**Veterans Grant:** The North Carolina Equal Access to Justice Commission worked with their state bar, the ABA, and Stateside Legal to set up NCVetslegal.org, and received an ABA grant for that project.

**State Justice Institute Grant:** "The State Justice Institute (SJI) was established by federal law in 1984 to award grants to improve the quality of justice in state courts, and foster innovative, efficient solutions to common issues faced by all courts." SJI offers 5 types of grants: Project Grants; Technical Assistance Grants; Curriculum Adaptation & Training Grants; Strategic Initiatives Grants; and Education Support Program. Language Access projects have received SJI grants, including in Nebraska. See: <http://www.sji.gov/grants/>.

## PART VI: KEY RESOURCES

### **American Bar Association Resource Center for Access to Justice Initiatives**

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

- ABA Manual of Fundraising Ideas for Civil Legal Aid
- Hallmarks of Effective Commissions
- Current Commission Directory

### **National Center for State Courts** <http://www.ncsc.org/atj>

- Justice For All (JFA) <http://www.ncsc.org/microsites/access-to-justice/home/justice-for-all-project.aspx>

### **Natural Allies: Philanthropy And Civil Legal Aid** (Public Welfare Foundation)

### **Voices for Civil Justice** <https://voicesforciviljustice.org/>

### **Legal Services Corporation** <https://www.lsc.gov/>

- 2017 Justice Gap Report <https://www.lsc.gov/media-center/publications/2017-justice-gap-report>

### **SRLN (Self-Represented Litigation Network)** <https://www.srln.org/>

## ENDNOTES

- <sup>1</sup> Robert Echols, Deborah Saunders & Pamela Casey, Center on Court Access to Justice for All, National Center for State Courts, Access Brief: Access to Justice Commissions 1 (2014), <http://www.ncsc.org/~media/Microsites/Files/access/NSCS%20brief%20ATJ%20Commissions%20updated%207-3-14.ashx>.
- <sup>2</sup> NORC at the University of Chicago (On Behalf of Legal Services Corporation), The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans 6 (2017), <https://www.lsc.gov/media-center/publications/2017-justice-gap-report>.
- <sup>3</sup> See ABA Resource Center for Access to Justice Initiatives, Research and Evaluation, Needs Assessments and Impact Studies, [www.atjsupport.org](http://www.atjsupport.org).
- <sup>4</sup> Paula Hannaford-Agor, Scott Graves & Shelly Spacek Miller, National Center for State Courts, Civil Justice Initiative: The Landscape of Civil Litigation in State Courts iv (2015), <https://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx>.
- <sup>5</sup> Lessons from the Field; Justice For All State Planning Documents; 2018; <http://www.ncsc.org/atj>; <http://www.ncsc.org/~media/Microsites/Files/access/JFALessonsLearnedFinal2018.pdf>.
- <sup>6</sup> ABA Resource Center for Access to Justice Initiatives, Staffing an Access to Justice Commission (2015), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_staffing\\_an\\_atj\\_commission\\_april\\_2015.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_staffing_an_atj_commission_april_2015.authcheckdam.pdf).
- <sup>7</sup> ABA Resource Center for Access to Justice Initiatives, Definition of an Access to Justice Commission (2014), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_atj\\_definition\\_commission.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_definition_commission.authcheckdam.pdf).
- <sup>8</sup> Note that a small number of these commissions may have minimal support from a court staffer, or perhaps only support from a judge who is its chair, but the commission itself is actually independent of the branch.
- <sup>9</sup> See ABA Resource Center for Access to Justice Initiatives, Definition of an Access to Justice Commission, *supra* note 7.
- <sup>10</sup> See California Commission on Access to Justice, Language Barriers to Justice in California: A Report of the California Commission on Access to Justice 35-41 (2005), [http://www.calbar.ca.gov/Portals/0/documents/reports/2005\\_Language-Barriers\\_Report.pdf?ver=2017-05-19-134110-167](http://www.calbar.ca.gov/Portals/0/documents/reports/2005_Language-Barriers_Report.pdf?ver=2017-05-19-134110-167).
- <sup>11</sup> See, e.g., ABA Resource Center for Access to Justice Initiatives, State Access to Justice Commissions: Creation, Composition, and Further Details (2017), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ATJReports/atjcommissions\\_structure2017.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/atjcommissions_structure2017.authcheckdam.pdf); ABA Resource Center for Access to Justice Initiatives, Directory and Structure, [https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defendants/initiatives/resource\\_center\\_for\\_access\\_to\\_justice/atj-commissions/commission-directory.html](https://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/atj-commissions/commission-directory.html).
- <sup>12</sup> See ABA Resource Center for Access to Justice Initiatives, Directory and Structure, *supra* note 11.
- <sup>13</sup> ABA Resource Center for Access to Justice Initiatives, Staffing an Access to Justice Commission, *supra* note 6.