Designing and Launching a New Access to Justice Commission

This document is intended for state (and equivalent jurisdiction) leaders who have begun the process of creating a new Access to Justice Commission. It focuses on the basic choices they must make in designing and launching a new Commission, through the initial kick-off. This document supplements Hallmarks of Effective Access to Justice Commissions, which is applicable to new Commissions as well as existing Commissions. Basic principles are supplemented with examples from existing Commissions.

The Process for Designing a New Access to Justice Commission

The core Access to Justice stakeholders in the state are involved as partners in the planning process. The planning process builds consensus about the potential benefit of a Commission.

The essence of the Access to Justice Commission model is partnership. All of the core Access to Justice stakeholders should feel that their voices are heard and respected, in the planning process and on the Commission itself. Processes that are perceived as closed or exclusive are unlikely to lead to successful Commissions.

At minimum, the following core legal community partners should be represented in the planning process:

- The state Supreme Court and other court entities as appropriate
- The state bar or bar association
- Civil legal aid providers and funders.

Depending on the circumstances of the state, other stakeholders can be invited to join in the planning process or alternatively can be brought in at a later stage. These include law schools, legislators and representatives of the executive branch, and leaders from outside the legal community (see discussion below).

While not all partners may be interested in playing leading roles in the planning process, those who are interested should be encouraged to do so, and no one partner should dominate at the expense of others. Reaching consensus can sometimes be difficult due to differing institutional concerns, perspectives, and cultures, but the investment of time and energy that it takes to work through the issues will pay off in the end. Experience has shown that even in states where a key
stakeholder (for example, the Supreme Court or the major legal services funder) does not initially support the Commission model, an open and inclusive process that carefully considers the pros and cons of the creation of a Commission is likely to result in the creation of a Commission that enjoys broad support.

Visits by Access to Justice leaders from outside the state during the course of the planning process can provide useful perspective and guidance. Visits to Commission meetings in other states and participation in the annual National Meeting of State Access to Justice Chairs has proven to be valuable as well.

The planning process can be limited to a work group or can include events that bring in a larger number of participants, such as a series of hearings or a summit. More inclusive events can help to mobilize support and surface possible concerns so that they can be resolved productively.

- Planning task force: Virginia (Planning task force meeting materials)
- Hearings: Arizona, Pennsylvania
- Stakeholder meeting: two-day Indiana Supreme Court-sponsored Access to Justice Education and Discussion Workshop.

The planning process can conclude with a final report and recommendations directed to the state’s Supreme Court or other potential conveners. Formal endorsements for the proposal from the major institutional stakeholders (for example, resolutions by the bar or bar association and the boards of legal aid funders and programs) can also be useful. Most recent Commissions have been created by Supreme Court rule or order at the end of the planning process, although this is not the only option.

- An example of a final report comes from Pennsylvania: Report of the Civil Legal Justice Coalition to the State Senate Judiciary Committee (including a call for an Access to Justice Commission).

**Commission Structure**

Successful Access to Justice Commissions are founded upon a strong partnership among the bar, the judiciary, and legal aid providers and funders. As long as the Commission’s structure provides for meaningful representation of these core legal community stakeholders, and the major stakeholders endorse it, no single model is best.1

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1Access to Justice Commissions have been successful in states that vary greatly with regard to geographical, economic and political factors such as size, population, urban/rural distribution, overall wealth, poverty population, and partisan politics. Similarly, Commissions have been successful in states with a wide range of differences in legal infrastructure (courts, organized bar, number of lawyers, number of legal aid programs, law schools, legal aid funders) and the underlying relationships among stakeholders. The particulars of the Commission’s formal structure are not determinative in themselves. Successful Commissions show a range of structural differences in such matters.
Commission planners should develop a model that will be as effective as possible given the circumstances in the state.

Within the basic parameters of the ABA Resource Center’s definition of an Access to Justice Commission, variations of the basic model exist from state to state. A comparative chart of Commission structures, including links to the orders creating Commissions, in each state is available here.

Many structural issues raise competing concerns. Issues to consider include the following:

Creating authority. Most recent Commissions have been created by Supreme Court order or rule. However, successful Commissions in California, Colorado, and Maine were created without formal Supreme Court action (though with Supreme Court engagement).

Degree of independence from Supreme Court. Of the Commissions created by the state Supreme Court, most operate somewhat independently of the Court and are not perceived as arms of the Court. These Commissions benefit from the authority and credibility conveyed by their Court charge, but they maintain flexibility to act and speak separately from the judicial branch. For example, they can make proposals and advocate positions that might be more difficult or less effective for the Supreme Court itself to promote. For most Commissions, this quality of independence results more from a shared understanding among the partners and the way that the Commission is perceived by others than from formal structural provisions. In contrast, in a few states, the Commission is considered to be an arm of the Supreme Court. In such structures, the Supreme Court and the Commission should be especially attentive to ensure that all partners are engaged and feel that they are appropriately represented.

Appointment of Commission members. In some Commissions, various entities (usually including the Supreme Court, the state bar, legal aid providers and funders, and law schools) have appointment power or can nominate Commissioners. In other Commissions, all appointments are made by the Supreme Court, with the exception of ex officio members and representatives of the legislative and executive branches. (In those Commissions that include legislative representatives, those representatives are typically appointed by the leaders of each house. Representatives of the executive branch are usually appointed by the governor.) Some rules or orders specify Commission seats for specific categories of people; others seek balance and inclusion informally, simply appointing a group of individuals by name.

- Supreme Court appoints all: Indiana, Massachusetts, Mississippi, Montana
- Supreme Court appoints, others nominate: District of Columbia, Hawaii, Illinois
- Various entities appoint: Arkansas, California, Colorado, North Carolina, Texas

Court representation. In a majority of Commissions, a justice of the Supreme Court sits on the Commission. Direct Supreme Court involvement can greatly enhance the Commission’s effectiveness. In addition, trial court judges, who are engaged in access-related issues on a daily
basis, are key Commission members in most states. A growing number of Commissions include a court administrator or clerk.

Legal aid community representation. Civil legal aid providers can be represented on the Commission in several ways:

- Provider executive directors are ex officio members
  - Mississippi
- A representative executive director is Commission member (a rotating position)
  - Texas
- Representative(s) of legal aid programs (unspecified)
  - Oklahoma, Virginia, Indiana

Whatever structure is chosen, all legal aid providers in the state should feel that their voices are heard on the Commission. Major state-level civil legal aid funders, if present, should also be represented.

Private bar representation. The state bar or bar association should be represented. Prominent bar leaders who can influence others are an important element of the mix.

Law schools. There should be at least one law school representative on the Commission. If there are a number of law schools in the state, the Commission can convene a group that includes representatives of all, such as an advisory committee or consortium to broaden participation.

- Texas: Law School Consortium
- Illinois: Law School Deans' Advisory Committee
- Hawaii: Law School Liaison Committee
- Washington: ATJ Board’s Law School Relations Committee

Legislators. Many states have found that including representatives of both house of the legislature on the Commission is extremely helpful with the Commission’s legislative agenda. These representatives are typically appointed by the legislature.

- Legislators (one from each house): Arkansas, Colorado, Hawaii, Kentucky, Mississippi, New Mexico, others

Representatives of the Executive Branch. A few Commissions include representatives of the Governor and/or Attorney General.

- Representative of the Governor: Colorado, Kentucky, Mississippi, others
- Representative of the Attorney General: Texas
Leaders from outside the legal community. A growing number of Commissions include business, religious, social services, health care, and community leaders. Such members can bring in valuable new ideas, perspectives, and contacts.

- Massachusetts: social service agency, health care
- Mississippi: church, business, civil rights, media, economic development, health care
- Virginia: social services professional or client

Stature. One of the principal reasons for the success of the Access to Justice Commission model is the inclusion of prominent, high-profile leaders, who help to increase the credibility and visibility of the Commission and its initiatives.

Balance and diversity. Commissioners should reflect a balance between people who can bring new ideas, contacts, and perspectives, and people who have experience in dealing with Access to Justice issues. The Commission’s composition should be diverse from a variety of perspectives, including geography, gender, and race and ethnicity.

Number of Commissioners. With a few exceptions, most Commissions have a number in the 15-25 range. Commissions should reflect a balance between, on the one hand, ensuring that all key stakeholders are represented and new partners are brought in, and on the other, ensuring that the Commission is not unwieldy. The Commission’s committee structure can be used to engage people who do not sit on the Commission itself.

Committee/task force/work group structure. Since Commission membership must be limited for the Commission to operate effectively, the Commission’s structure of committees, work groups, or task forces serves critically important functions by bringing in representatives from the full range of stakeholders and leaders from outside the legal community. Typically, most of the Commission’s work is done at this level. (See Hallmarks of Effective ATJ Commissions for additional discussion.)

Terms. Terms of office should be staggered. Term limits can provide a discreet way to lose ineffective members, but at the cost of losing effective leaders. One approach to reconciling these competing values is an affirmative (not automatic) re-appointment process for Commissioners, but without terms limits.

- Limits: Colorado (three three-year terms); Hawaii (two three-year terms); Indiana (two three year terms, with exceptions)
- No limit on reappointment: Oklahoma, Virginia

Reporting to Supreme Court. Maintaining communication with the state’s highest court is essential. In the majority of Commissions, a judge on the Supreme Court is an active member or
a liaison and works to keep the Court informed and engaged. Where this is not the case, Commissions should find other ways to build and maintain Supreme Court engagement, such as an annual in-person meeting between the entire Court and the Commission or regular evaluation of the Commission by the Court. While many Commissions are required to provide regular written reports to the Court, such reports may not be enough.

- Member/Liaison: California (recently added), District of Columbia, Texas.
- Annual meeting: Washington

**Term/Reauthorization.** The Commission model is designed to institutionalize Access to Justice partnerships on a long-term basis, to ensure follow-through and ongoing commitment. The Commission should not be conceived as having a limited term, with a sunset provision. If reauthorization is required, the term should be long enough to provide the Commission with sufficient time to get started and carry out meaningful initiatives, preferably no less than four or five years.

**Leadership**

**The Commission has strong, active, high-profile leadership.**

Building an effective structure and obtaining support from core stakeholders is not enough. Strong leadership on the part of individuals, especially at the beginning, is necessary for an Access to Justice effort to succeed.

The position of chair or co-chair of the Commission is critically important. The chair(s) should be prominent and well-respected, with strong leadership skills and the ability and willingness to devote a substantial amount of time to the Commission. (One long-time Commission chair, an attorney in a large law firm at the time, has estimated that in the early years of the Commission, she devoted as much as half her time to Commission work.)

The position of chair provides a platform for a strong leader who has no other formal Access to Justice position; appointing such a person as the Chair or Co-chair can mobilize a powerful voice for Access to Justice. A model that works effectively in a number of states is having co-chairs, one of whom is a Supreme Court justice and the other a prominent bar leader (alternatively, the Supreme Court justice could be vice-chair). The chair/co-chairs can be appointed directly by the Supreme Court or elected by the Commission.

- Chair is bar leader: Alabama, Illinois, Texas
- Chair is law professor/dean: District of Columbia, Montana, Tennessee
- Chair is retired Supreme Court Justice: Arkansas, Maryland
- Co-Chairs, one of whom is Supreme Court Justice: Delaware, Massachusetts, New Mexico, Virginia
- Chair is Supreme Court Justice: North Carolina, South Carolina (Chief or designee), Wyoming
Mission and Scope

The Commission’s mission and scope of activities have a primary focus on overcoming specific barriers to civil justice created by inability to afford counsel, and are broad enough to consider a full range of potential solutions.

The most effective Commissions have a broad scope of activity and do not refrain from working in any particular areas. The general areas in which Commissions are active include the following (this list is intended to highlight the principal areas of activity, not to exclude any potential area; for a complete list of current initiatives with examples, see the Expansion Project’s Access to Justice Commission Initiatives: Examples and Resources).

- Increasing public awareness of the need for expanded access to justice and civil legal assistance to low- and moderate-income residents through legal needs studies, communications campaigns, hearings, and other events;
- Increasing state-level funding for civil legal assistance through legislative appropriations, fee and fine surcharges, special fees such as pro hac vice, rule changes to increase IOLTA revenues, private bar fundraising campaigns, cy pres awards, and other methods;
- Increasing attorney pro bono service via increased judicial involvement, development of statewide structures, rules changes, recruitment campaigns, increased recognition for contributions, and other means;
- Making the courts more user-friendly for self-represented litigants through simplification of court processes and forms, amended rules, development of judicial bench books, expanded judicial involvement in proceedings, judicial education, training for court clerks, self-help centers and materials, clinics, and other methods;
- Increasing collaboration and coordination among legal aid providers and, as appropriate, promoting the creation of new providers to move toward ensuring that all low-income people in the state have access to needed civil legal assistance;
- Promoting changes in the legal profession to make services more affordable, such as limited scope representation and licensing of legal technicians in certain specialty areas;
- Promoting a commitment to pro bono and Access to Justice among law students and new lawyers;
- Addressing related issues, such as student loan repayment for legal aid lawyers, administrative justice, and challenges faced in the legal context by people with limited English proficiency.

In some cases, the scope of the Commission’s activities may be limited to reflect the fact that a state-wide partnership devoted to a particular Access to Justice function (such as a coalition supporting legislative funding for civil legal aid) already exists. In such cases, the planners of the Commission should ensure that the Commission’s efforts are coordinated with those of the other entity, to avoid duplication and potential conflict. Under some circumstances, it may be appropriate to incorporate an existing effort (such as a self-represented litigant task force) into the Commission, if all stakeholders are in agreement.
There may be activities that some Commission members cannot engage in or do not feel comfortable with; for example, certain fundraising activities. In these areas, the Commission can take action noting that some categories of members did not participate; or the Commission can create a separate work group or advisory group to take on the effort.

**Staffing**

The Commission has staffing adequate to meet to carry out needed responsibilities and to support the activities of the Commission and its committees.

Staffing a new Commission is often a challenge for planners. While leadership roles can be filled by volunteers, some kind of staff capacity is necessary for adequate support, continuity, communications, and continued momentum.

Access to Justice planners should do whatever they can to find the resources to ensure that their efforts are staffed as effectively as possible. Ideally, staff should have Access to Justice as a sole, or at least primary, job responsibility and should report directly to the Access to Justice leadership. In practice, this will not always be possible, especially in a smaller state with few resources. Options for staffing include:

- Full or part-time dedicated staff
  - Arkansas, District of Columbia: full time Executive Director
- Staff has other responsibilities (e.g. court administration, bar pro bono, etc.)
  - Colorado, Wisconsin: percentage of time of Bar’s pro bono/public service staff
  - Virginia: Administrative Office of Courts staff
  - Indiana: bar foundation staff
  - Kentucky: state legal aid and back-up program
- Full-time staffer based at courts, bar, other entity
  - California, Mississippi, Nevada, Texas, Washington: full time ED or staff person at Bar (California and Texas: other staff shared with Bar and/or Access to Justice Foundation)
  - Maryland, Tennessee, West Virginia, full time ED or staff person at AOC
  - Montana, Alabama, Maine: position at bar foundation, funded by different sources
- Staffer works independently, e.g. as consultant to Commission
  - Massachusetts
- Sources of funding: courts, bar, legal aid support programs, foundations, fees, law firms
  - North Carolina: add-on to CLE fee
  - DC: contribution from major law firms
  - Maine: position at bar foundation funded by contributions from courts, bar foundation, bar, others
A number of very successful Commissions have started and operated for several years with no staff. In these cases, the Chair, another Commission Member, or staff from stakeholder entities assumed the responsibilities that would normally be assigned to staff. Administrative staff from the courts or other stakeholders can handle administrative tasks.

- Hawaii: planned staffing was not implemented due to IOLTA funding losses; Commission is staffed by ED of Hawaii Justice Foundation, court administrative staff, and volunteer commission member who devotes substantial time.
- New Mexico did not have staffing for a number of years from its inception; co-chair devoted substantial time to administration, with support from court and bar administrative staff.
- New York: chair devotes substantial time to administration, with administrative support from courts and staff of participating law firms.

Additional information about Commission staffing is available from the ABA Resource Center for Access to Justice Initiatives.

**Launching the New Commission**

The Commission’s launch orients Commission Members, consolidates support from stakeholders, initiates planning, and builds energy and enthusiasm.

A variety of different models or combinations have been successful in launching new Commissions effectively.

**Special program for first meeting.** A possible agenda for an initial Commission might include:

- Welcome by Chief Justice
- Introductions
- Presentations on background and overview – the process that led up to the creation of the Commission, recommendations from the process, national perspectives and overview of initiatives in other states, overview of need and delivery system
- Chair: Expectation of Commission members and internal operations
- Perspectives from Commission members – what they perceive as the most important access needs and possible solutions; what they hope to accomplish
- Discussion and identification of priorities and next steps; planning for next meeting
  - Virginia

**Strategic planning process.** Formal facilitated planning event and follow-up, leading to written strategic plan.
  - Montana
  - Indiana
Statewide Access to Justice Conference. Brings together a broad spectrum of stakeholders for:

- Presentations on major issues
- Brainstorming and discussion
- Creation of work groups/committees and recruitment of members
  - Illinois

Hearings/need assessment. Statewide regional hearings or listening sessions to gather information and engage with local leaders.

The Commission’s initial agenda balances planning and action and short-term and long-term goals.

Hitting the ground running and achieving some identifiable successes in the short term builds momentum and demonstrates the effectiveness of the Commission to stakeholders. Spending too much time on research and planning at the outset, with no action, can be counter-productive. At the same time, the Commission’s actions should be part of an overall plan. Ideally, the Commission can identify some immediate areas of activity while developing a comprehensive strategic plan for moving forward. (See Hallmarks of Effective ATJ Commissions for more on planning and assessment.)

Visit the ABA Resource Center for ATJ Initiatives’ online resource center:

www.atjsupport.org