

**AMERICAN BAR ASSOCIATION**  
**ADOPTED BY THE HOUSE OF DELEGATES**

**AUGUST 9-10, 2010**

**RECOMMENDATION**

RESOLVED, That the American Bar Association adopts the black letter and commentary of the ABA Model Access Act, dated August 2010.

**ABA Model Access Act**  
**(August 2010)**

**SECTION 1. LEGISLATIVE FINDINGS**

The Legislature finds and declares as follows:

- A. There is a substantial, and increasingly dire, need for civil legal services for the poor in this State. Due to insufficient funding from all sources, existing program resources for providing free legal services in civil matters to indigent persons cannot meet the existing need.
- B. A recent report from Legal Services Corporation, *Documenting the Justice Gap in America*, concludes that “only a fraction of the legal problems experienced by low-income individuals is addressed with the help of an attorney.” It also concludes that, “Nationally, on average, only one legal aid attorney is available to serve 6,415 low-income individuals. In comparison, there is one private attorney providing personal legal services for every 429 individuals in the general population.” The report further notes that the number of unrepresented litigants is increasing, particularly in family and housing courts.
- C. Fair and equal access to justice is a fundamental right in a democratic society. It is especially critical when an individual who is unable to afford legal representation is at risk of being deprived of certain basic human needs, as defined in Section 2.B. Therefore, meaningful access to justice must be available to all persons, including those of limited means, when such basic needs are at stake.
- D. The legal system [of this state] is an adversarial system of justice that inevitably allocates to the parties the primary responsibility for discovering the relevant evidence, identifying the relevant legal principles, and presenting the evidence and the law to a neutral decision-maker, judge or jury. Discharging these responsibilities generally requires the knowledge and skills of a licensed legal professional.
- E. Many of those living in this State cannot afford to pay for the services of lawyers when needed for those residents to enjoy fair and equal access to justice. In order for them to enjoy this essential right of citizens when their basic human needs are at stake, the State government accepts its responsibility to provide them with lawyers at public expense.
- F. Providing legal representation to low-income persons at public expense will result in greater judicial efficiency by avoiding repeated appearances and delays caused by incomplete paperwork or unprepared litigants, will produce fairer outcomes, and will promote public confidence in the systems of justice.

- G. Funding provided pursuant to this Act shall not reduce either the amount or sources of funding for existing civil legal services programs below the level of funding in existence on the date that this Act is enacted. This Act shall not supersede the local or national priorities of legal services programs in existence on the date that this Act is enacted.

**Commentary:** States in which legal needs studies or analyses have been conducted may consider either adding appropriate language in Section 1.B regarding such studies or replacing the current language referring to the recent federal Legal Services Corporation Report with a reference to state-specific studies or analyses.

## SECTION 2. DEFINITIONS.

In this Act:

- A. "Adversarial proceedings" are proceedings presided over by a neutral fact-finder in which the adversaries may be represented by a licensed legal professional, as defined herein, and in which rules of evidence or other procedural rules apply to an established formal legal framework for the consideration of facts and application of legal rules to produce an outcome that creates, imposes, or otherwise ascribes legally enforceable rights and obligations as between the parties.
- B. "Basic human needs" means shelter, sustenance, safety, health, and child custody.
- i. "Shelter" means a person's or family's access to or ability to remain in a dwelling, and the habitability of that dwelling.
  - ii. "Sustenance" means a person's or family's ability to preserve and maintain assets, income or financial support, whether derived from employment, court-ordered payments based on support obligations, government assistance including monetary payments or "in kind" benefits (*e.g.*, food stamps) or from other sources.
  - iii. "Safety" means a person's ability to obtain legal remedies affording protection from the threat of serious bodily injury or harm, including proceedings to obtain or enforce protection orders because of alleged actual or threatened violence, and other proceedings to address threats to physical well being.
  - iv. "Health" means access to health care for treatment of significant health problems, whether the health care at issue would be financed by government programs (*e.g.*, Medicare, Medicaid, VA, etc.), financed through private insurance, provided as an employee benefit, or otherwise.
  - v. "Child custody" means proceedings in which: (i) the parental rights of a party are at risk of being terminated, whether in a private action or as a result of proceedings initiated or intervened in by the state for the purposes of child protective intervention, (ii) a parent's right to residential custody of a child or the parent's visitation rights are at risk of being terminated, severely limited, or subject to a supervision requirement,

- or (iii) a party seeks sole legal authority to make major decisions affecting the child. This definition includes the right to representation for children only in proceedings initiated or intervened in by the state for the purposes of child protective intervention.
- C. "Full legal representation" is the performance by a licensed legal professional of all legal services that may be involved in representing a party in a court, an administrative proceeding, or in an arbitration hearing, in which by law or uniform practice parties may not be represented by anyone other than licensed members of the legal profession.
- D. "Licensed legal professional" is a member of the State Bar or other entity authorized by the State to license lawyers, a law student participating in a State authorized, attorney-supervised clinical program through an accredited law school, or a member of the Bar of another jurisdiction who is legally permitted to appear and represent the specific client in the particular proceeding in the court or other forum in which the matter is pending.
- E. "Limited scope representation" is the performance by a licensed legal professional of one or more of the tasks involved in a party's dispute before a court, an administrative proceeding, or an arbitration body, only to the extent permitted by Rule 1.2(c) of the ABA Model Rules of Professional Conduct or the jurisdiction's equivalent, and when such limited representation is sufficient to afford the applicant fair and equal access to justice consistent with criteria set forth in Section 3 hereof. Depending on circumstances, this form of assistance may or may not be coupled with self-help assistance.
- F. "Public legal services" includes full legal representation or limited scope representation, through any delivery system authorized under this Act, and funded by the State Access Fund provided in Section 5 hereof.
- G. The "State Access Board" (the "Board") is established as a statewide body, independent of the judiciary, the attorney general, and other agencies of state government, responsible for administering the public legal services program defined by and funded pursuant to this Act.

**Commentary:**

Adopting jurisdictions may wish to make modifications, based on the unique circumstances applicable in their communities, to the list of "basic human needs" set forth in this section. The list set forth in this section is considered the most basic of needs that a civil right to counsel should address; some jurisdictions may wish to expand the list as appropriate to their situation. For example, some jurisdictions may wish to consider expanding the definition of "child custody" to encompass proceedings involving the establishment of paternity and/or the complete denial of visitation rights.

In proceedings in which a parent who meets the eligibility requirements set forth herein is threatened with loss of child custody as defined in Section 2.B.v, representation should be provided by the State as set forth in the Act. Recognizing that needs, priorities and resources

may differ from jurisdiction to jurisdiction, implementing jurisdictions may wish to consider some or all of the following factors: (i) the number of private child custody disputes likely to meet these standards, (ii) the impact of providing legal services in private child custody cases on the ability of the state to serve other basic needs as set forth herein; (iii) the relative impact on the state courts of a lack of representation in private child custody cases as compared to other basic needs cases; and (iv) the availability of alternative financial resources to pay for representation for the applicant, such as cases in which the parent seeking to terminate or to severely limit the other parent's child custody rights has the ability to pay for the applicant's representation. Additionally, implementing jurisdictions are referred to the ABA Standards on the Representation of Children in Child Custody Cases (2003) for suggested criteria to decide when counsel should be appointed for children in custody cases. All children subject to proceedings in which the state is involved due to allegations of child abuse or neglect should have legal representation as long as jurisdiction continues.

In light of the extraordinary level of unmet need, and the limited resources likely to be available to support additional positions for state-funded legal services or other sources of legal representation for the poor, to the extent the jurisdiction permits their use, jurisdictions may consider authorizing paralegals, or other lay individuals who have completed appropriate training programs, to provide certain types of limited, carefully-defined legal services in administrative proceedings to persons qualifying under this Act for representation. If permitted, such services should always be provided under the direct supervision of a licensed lawyer. Moreover, limited scope representation should not be considered a substitute for full legal representation when full legal representation is necessary to provide the litigant fair and equal access to justice, but rather should be employed only when consistent with Section 3 below, and when limited scope representation is determined to be sufficient to meet that high standard.

### **SECTION 3. RIGHT TO PUBLIC LEGAL SERVICES.**

- A. Subject to the exceptions and conditions set forth below, public legal services shall be available at State expense, upon application by a financially-eligible person, in any adversarial proceeding in a state trial or appellate court, a state administrative proceeding, or an arbitration hearing, in which basic human needs as defined in Section 2.B hereof are at stake. Depending on the circumstances described in the following Sections, appropriate public legal services may include full legal representation or limited scope representation as necessary for the person to obtain fair and equal access to justice for the particular dispute or problem that person confronts, including, where necessary, translation or other incidental services essential to achieving this goal.
- B. In a State trial or appellate court, administrative tribunal, or arbitration proceeding, where by law or established practice parties may be represented only by a licensed legal professional, public legal services shall consist of full legal representation as defined herein, provided pursuant to the following conditions and with the following exceptions:
  - i. Full public legal representation services shall be available to a plaintiff or petitioner if a basic human need as defined herein is at stake and that person has a reasonable possibility of achieving a successful outcome. Full public legal

representation services shall be available to a financially eligible defendant or respondent if a basic human need as defined herein is at stake, so long as the applicant has a non-frivolous defense. Initial determinations of eligibility for services may be based on facial review of the application for assistance or the pleadings. However, the applicant shall be informed that any initial finding of eligibility is subject to a further review after a full investigation of the case has been completed. In family matters, the person seeking a change in either the de facto or de jure status quo shall be deemed the plaintiff and the person defending the status quo shall be deemed the defendant for purposes of this Act, regardless of their formal procedural status. However, any order awarding temporary custody pending resolution on the merits shall not alter which party is deemed to be the plaintiff and defendant in the case. Furthermore, in any case originally initiated by the state, the persons against whom the state moved shall be considered the defendants for all stages of the proceedings.

ii. Eligibility for full public legal representation services in State appellate courts is a new and different determination after the proceedings in a trial court or other forum conclude. If the financially eligible applicant is an appellant or equivalent, full legal representation services shall be available when there is a reasonable probability of success on appeal under existing law or when there is a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law. If the financially eligible applicant is a respondent or equivalent, however, full legal representation services shall be available unless there is no reasonable possibility the appellate court will affirm the decision of the trial court or other forum that the opposing party is challenging in the appellate court. In determining the likely outcome of the case, the Board shall take into account whether the record was developed without the benefit of counsel for the applicant.

iii. Irrespective of the provisions of Sections 3.B.i and 3B.ii above, full public legal representation services shall not be available to an applicant in the following circumstances:

a. in proceedings in any forum where parties are not allowed to be represented by licensed legal professionals (however, this does not preclude a financially-eligible person from receiving full legal representation if the opposing party in such a forum appeals a decision of that forum that was favorable to the applicant to a forum where licensed legal professionals are permitted to provide representation, and that opposing party is represented by a licensed legal professional in that appeal);

b. if legal representation is otherwise being provided to the applicant in the particular case, such as through existing civil legal aid programs, the services of a lawyer who provides such representation on a contingent fee basis, as the result of the provisions of an insurance policy, as part of a class action that will reasonably serve the legal interests of the applicant and that

he or she is able to join, or if the applicant's interests are being protected by counsel in some other way;

c. if the matter is not contested, unless the Board determines the interests of justice require the assistance of counsel;

d. if under standards established by the Board, and under the circumstances of the particular matter, the Board deems a certain type and level of limited scope representation is sufficient to afford fair and equal access to justice and is sufficient to ensure that the basic human needs at stake in the proceeding are not jeopardized due to the absence of full representation by counsel (however, limited scope representation shall be presumed to be insufficient when the opposing party has full representation);

e. for matters in designated courts or other forums when the Board evaluates and certifies, after public hearings and in compliance with the State's [statutory code governing administrative procedures], that:

1. the designated court or forum: (1) operates in such a manner that the judge or other dispute resolver plays an active role in identifying the applicable legal principles and in developing the relevant facts rather than depending primarily on the parties to perform these essential functions; (2) follows relaxed rules of evidence; and (3) follows procedural rules and adjudicates legal issues so simple that non-lawyers can represent themselves before the court or other forum and still enjoy fair and equal access to justice; and
2. within such designated court or forum, the specific matter satisfies the following criteria: (1) the opposing party is not represented by a licensed legal professional; (2) the particular applicant possesses the intelligence, knowledge, language skills (or appropriate language assistance), and other attributes ordinarily required to represent oneself and still enjoy fair and equal access to justice; and (3) if self-help assistance is needed by this party to enjoy fair and equal access to justice, such self-help assistance is made available.

iv. Limited scope representation as defined herein shall be available to financially eligible individuals where the limited service provided is required because self-help assistance alone would prove inadequate or is not available and where such limited scope representation is sufficient in itself or in combination with self-help assistance to provide the applicant with effective access to justice in the particular case in the specific forum. In matters before those courts or other forums in which representation can be provided only by licensed legal professionals, however, limited

- scope representation can only be substituted for full representation when permitted by Section 3.B.iii above.
- C. In addition, any state trial or appellate court judge, any state administrative judge or hearing officer, or any arbitrator may notify the Board in writing that, in his or her opinion, public legal representation is necessary to ensure a fair hearing to an unrepresented litigant in a case believed to involve a basic human need as defined in Section 2.B. Upon receiving such notice, the Board shall timely determine both the financial eligibility of the litigant and whether the subject matter of the case indeed involves a basic human need. If those two criteria are satisfied, the Board shall provide counsel as required by this Act.
  - D. In order to ensure that the scarce funds available for the program are used to serve the most critical cases and the parties least able to access the courts without representation, eligibility for representation shall be limited to clients who are unable to afford adequate legal assistance as defined by the Board, including those whose household income falls at or below [125 percent] of the federal poverty level.
  - E. Nothing in this Act should be read to abrogate any statutory or constitutional rights in this state that are at least as protective as the rights provided under this Act.

**Commentary:** With regard to Section 3.B.ii, in determining whether there is “a reasonable probability of success on appeal” for appellants or equivalents, or “no reasonable possibility the appellate court will affirm the decision of the trial court or other forum” for respondents or equivalents, the Board or its designee shall give consideration to existing law or the existence of a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law.

In Section 3.C, the Model Act does not authorize the Board to apply a merits test or any other limitation, other than financial and subject matter eligibility, upon receipt of notice from a trial judge (or other type of fact-finder named therein) that an unrepresented litigant requires public legal representation. The rationale for this distinction is that, while it may be appropriate for the Board to review criteria relating to areas requiring detailed knowledge of the Model Act and any regulations that may have been promulgated (e.g., financial and subject matter eligibility), it is unseemly for the Board to second-guess the judge on the issue of whether a litigant’s position has sufficient merit.

The 125 percent income cap in Section 3.D suggests the minimum economic strata the Model Act seeks to target. Implementing jurisdictions may consider alternative financial eligibility standards that target a larger percentage of the population unable to afford legal services in cases of basic needs, such as 150 percent of the federal poverty level, or a formula that also takes into account other factors relevant to the financial ability of the applicant to pay for legal services. For example, the determination of a particular applicant’s financial eligibility ordinarily should take account of the applicant’s assets and medical or other extraordinary ongoing expenditures for basic needs. Some of those factors, such as substantial net assets, might make a person ineligible despite a current income that is below 125 percent of the federal poverty level. Other



factors might justify providing a person with legal services as a matter of right, even though gross income exceeds 125 percent of the federal poverty level.

The Model Act assumes that services will be provided only in the context of adversarial proceedings. Many legal matters impacting the poor may be resolved without adversarial proceedings (e.g. transactional matters, issues relating to applications for benefits), and advice of counsel may be important to a fair resolution of such matters. While this Model Act does not address services in non-adversarial settings, adopting jurisdictions may wish to consider whether services in such settings would provide a useful preventive approach and might conserve resources that otherwise would need to be expended in the course of supporting adversarial proceedings. If so, such an adopting jurisdiction may wish to adjust the Model Act to provide some services outside of adversarial settings.

#### **SECTION 4. STATE ACCESS BOARD.**

- A. There is established within the State judicial system an independent State Access Board (“Board”) that shall have responsibility for policy-making and overall administration of the program defined in this Act, consistent with the provisions of this Act.
- B. The Board shall consist of \_\_\_\_ [an odd number of] members appointed by [such representatives of the different branches of government and/or bar associations to be set forth herein]. A majority of the members shall be persons licensed to practice law in the jurisdiction. The members should reflect the broadest possible diversity, taking into account the eligible client population, the lawyer population, and the population of the state generally.

Board members shall be compensated at the rate of [\$\_\_ a day] for their preparation and attendance at Board meetings and Board committee meetings, and shall be reimbursed for all reasonable expenses incurred attendant to discharging their responsibilities as Board members.

- C. The Board shall select an Executive Director who shall serve at the pleasure of the Board, and who shall be responsible for implementing the policies and procedures determined by the Board, including recommendations as to staff and salaries, except for his or her own salary, which shall be determined by the Board.
- D. The Board is empowered to promulgate regulations and policies consistent with the provisions of the Act and in accordance with the State’s [statutory code governing administrative procedures].
- E. The Board shall:
  - i. Ensure that all eligible persons receive appropriate public legal services when needed in matters in which basic human needs as defined in Section 2.B hereof are at stake. It is the purpose and intent of this Section that the Board

manage these services in a manner that is effective and cost-efficient, and that ensures recipients fair and equal access to justice.

ii. Establish, certify, and retain specific organizations to make eligibility determinations (including both financial eligibility and the applicable standard defined in Section 3.B hereof) and scope of service determinations pursuant to Section 3 hereof.

iii. Establish and administer a system that timely considers and decides appeals by applicants found ineligible for legal representation at public expense, or from decisions to provide only limited scope representation.

iv. Administer the State Access Fund established and defined in Section 5, which provides the funding for all public legal service representation needs required by this Act.

v. Inform the general public, especially population groups and geographic areas with large numbers of financially eligible persons, about their legal rights and responsibilities, and the availability of public legal representation, should they experience a problem involving a basic human need.

vi. Establish and administer a system of evaluation of the quality of representation delivered by the institutional providers and private attorneys receiving funding for representation through the State Access Fund.

vii. If reliable, relevant data is not otherwise available, conduct, or contract with others to conduct, studies which assess, among other things, the need and demand for public legal services, the sufficiency of different levels of public legal services to provide fair and equal access to justice in various circumstances, the effectiveness of those services in positively impacting people's lives and legal situations, the quality and cost-effectiveness of different providers of public legal services, and other relevant issues.

viii. Prepare and submit an annual report to the Governor, the Legislature, and the Judiciary on the extent of its activities, including any data utilized or generated relating to its duties and both quantitative and qualitative data about the costs, quantity, quality, and other relevant performance measures regarding public legal services provided during the year. The Board also may make recommendations for changes in the Model Access Act and other State statutes, court rules, or other policies that would improve the quality or reduce the cost of public legal services under the Model Access Act.

**Commentary:** While the size and composition of the Board are matters to be determined based on local circumstances and need, it is suggested that an appropriate number of members to consider is seven, with appointments being made by the Governor, the Chief Justice of the state Supreme Court, and either a representative of the state Legislature or President of a state or

metropolitan bar association. Appointments should be allocated to ensure that a majority of members are lawyers. For example, on a seven-person board, the Governor, Chief Justice, Legislative representative and Bar President could each appoint one lawyer and the government representatives could have a second appointment that could be a non-lawyer. It is suggested that terms be for three years, with one renewal possible, and that terms be staggered.

Broad diversity on the Board is of critical importance, particularly in light of the eligible client population. Other diversity factors may be taken into account as well. For example, it may make sense in a particular state to have business and civic leaders on the Board as well as persons representing the eligible population or others.

Also, as an alternative to creating an independent administrative body within the judicial system, a State may consider providing for administration of the program by an entirely independent entity, by the state bar association, the state court system, or the executive branch. Notably, most nations with advanced legal aid programs - including the United States - have chosen to establish some form of independent or semi-independent body to administer their public legal aid systems. Smaller states, however, may find it too cumbersome or expensive to set up a free-standing independent body to administer their public legal aid system.

The emphasis in Section 4.E.i is on effective, cost-efficient services that provide the applicant with fair and equal access to justice. How that is accomplished may vary from state to state depending on the resources available in the community. Thus, the Board may choose to contract with local non-profit legal aid organizations or with private attorneys, or both, as it deems appropriate, to provide the services authorized under the Model Access Act. If the Board chooses to contract with a local non-profit legal aid organization, it nonetheless may choose to contract as well with private attorneys under circumstances it deems appropriate, such as when non-profit legal aid organizations are unable to provide representation to an eligible client because of an ethical conflict, legal prohibition or because there are not enough salaried attorneys properly to represent the number of clients requiring representation in a given court or geographic area at the time representation is required, or in cases when, because of special expertise or experience, or other exceptional factors, a private attorney can provide representation that better serves the goals of effectiveness, cost-efficiency, and fair and equal access to justice.

Assuming it is lawful to do so under the law of the enacting State, Section 4.E.ii may include authority for the Board to delegate eligibility and scope of public legal services determinations to local legal aid organizations, such as legal services organizations funded by the federal Legal Services Corporation, those funded under the State IOLTA program, and any self-help centers the State court system certifies as qualified, all of which would automatically be considered certified to perform these functions. In assessing eligibility, the organization making the determination should be authorized to evaluate both the applicant's financial eligibility and whether the applicable standard defined in Section 3.B is satisfied.

## **SECTION 5. STATE ACCESS FUND.**

- A. The State Access Fund supplies all the financial support needed for the services guaranteed by the provisions of this Act as well as the costs of administering the program established under this Act.
- B. In conjunction with preparation of the state judicial budget, the Board shall submit an estimate of anticipated costs and revenues for the forthcoming fiscal year and a request for an appropriation adequate to provide sufficient revenues to match the estimated costs. Annually thereafter, the Board shall provide the Governor, the Legislature, and the Judiciary with a status report of revenues and expenditures during the prior year. Within three months after the end of the state's fiscal year the Board shall submit to the Governor, the Legislature, and the Judiciary a request for the funds required from general revenues to make up the difference, if any, between revenues received and appropriated pursuant to the initial budget estimate and the obligations incurred in order to support the right defined in this law.

**Commentary:** Because of varying financial conditions in implementing jurisdictions, no attempt is made in this Section to identify possible revenue sources. Implementing jurisdictions may consider using any available source of revenues, but shall ensure that current financial support to existing legal aid providers is not reduced, as set forth in Section 1 G. of this Model Access Act.



**REPORT**  
(Revised)

**This Resolution Seeks to Create a Model Act for Implementation of the Policy Unanimously Adopted by the ABA in 2006 in Support of a Civil Right to Counsel in Certain Cases.<sup>1</sup>**

In August 2006, under the leadership of then-ABA President Michael S. Greco and Maine Supreme Judicial Court Justice Howard H. Dana, Jr., Chair of the ABA Task Force on Access to Civil Justice, the House of Delegates unanimously adopted a landmark resolution calling on federal, state and territorial governments to provide low-income individuals with state-funded counsel when basic human needs are at stake. The policy adopted pursuant to Recommendation 112A provides as follows:

**“RESOLVED,** That the American Bar Association urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.”

The Report supporting adoption of 2006 Resolution 112A set forth the long history of the ABA’s unwavering and principled support for meaningful access to legal representation for low income individuals, as well as the history of the ABA’s policy positions favoring a right to counsel. Because of their direct relevance to the present Recommendation and Report, portions of the 2006 Recommendation and Report are quoted here:

The ABA has long held as a core value the principle that society must provide equal access to justice, to give meaning to the words inscribed above the entrance to the United States Supreme Court – “Equal Justice Under Law.” As one of the Association’s most distinguished former Presidents, Justice Lewis Powell, once observed:

‘Equal justice under law is not just a caption on the facade of the Supreme Court building. It is perhaps the most inspiring ideal of our society . . . It is fundamental that justice should be the same, in substance and availability, without regard to economic status.’

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<sup>1</sup> This Recommendation and Report is the product of the ABA Working Group on Civil Right to Counsel comprised of representatives from a number of ABA Sections, Committees and other entities. ABA President Carolyn Lamm requested that the Working Group identify a means to advance the cause of establishing a civil right to counsel, as set forth in Recommendation and Report 112A adopted unanimously by the House of Delegates in August 2006, particularly in light of the impact on the lives of countless persons throughout the United States of the current, most severe economic recession in decades.

The ABA also has long recognized that the nation’s legal profession has a special obligation to advance the national commitment to provide equal justice. The Association’s efforts to promote civil legal aid and access to appointed counsel for indigent litigants are quintessential expressions of these principles.

In 1920, the Association created its first standing committee, “The Standing Committee on Legal Aid and Indigent Defendants,” with Charles Evans Hughes as its first chair. With this action, the ABA pledged itself to foster the expansion of legal aid throughout the country. Then, in 1965, under the leadership of Lewis Powell, the ABA House of Delegates endorsed federal funding of legal services for the poor because it was clear that charitable funding would never begin to meet the need. In the early 1970s, the ABA played a prominent role in the creation of the federal Legal Services Corporation to assume responsibility for the legal services program created by the federal Office of Economic Opportunity. Beginning in the 1980s and continuing to the present, the ABA has been a powerful and persuasive voice in the fight to maintain federal funding for civil legal services.

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### ***The ABA Has Adopted Policy Positions Favoring a Right to Counsel***

The ABA has on several occasions articulated its support for appointing counsel when necessary to ensure meaningful access to the justice system. In its amicus brief in *Lassiter v. Dept of Social Services of Durham County*, 425 U.S. 18 (1981), the ABA urged the U.S. Supreme Court to rule that counsel must be appointed for indigent parents in civil proceedings that could terminate their parental rights, ‘[I]n order to minimize [the risk of error] and ensure a fair hearing, procedural due process demands that counsel be made available to parents, and that if the parents are indigent, it be at public expense. *Id.* at 3-4. The ABA noted that “skilled counsel is needed to execute basic advocacy functions: to delineate the issues, investigate and conduct discovery, present factual contentions in an orderly manner, cross-examine witnesses, make objections and preserve a record for appeal. . . . Pro se litigants cannot adequately perform any of these tasks.’

In 1979 the House of Delegates adopted Standards Relating to Counsel for Private Parties, as part of the Juvenile Justice Standards. The Standards state ‘the participation of counsel on behalf of all parties subject to juvenile and family court proceedings is essential to the administration of justice and to the fair and accurate resolution of issues at all stages of those proceedings.’ These standards were quoted in the *Lassiter* amicus brief. Also, in 1987, the House of Delegates adopted policy calling for appointment of counsel in guardianship/conservatorship cases.<sup>2</sup>

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<sup>2</sup> See House of Delegates Resolution adopted in August, 1987 offered by the Special Committee on Legal Problems of the Elderly: “BE IT RESOLVED, That the American Bar Association supports efforts to improve judicial practices concerning guardianship, and adopts the following Recommended Judicial Practices and urges their implementation for the elderly at the state level: ... I. Procedure: Ensuring Due Process Protections ... C.

The ABA stated these positions some years ago, but its continuing commitment to the principles behind the positions was recently restated when it championed the right to meaningful access to the courts by the disabled in its amicus brief in *Tennessee v. Lane*, 541 U.S. 509 (2004). The case concerned a litigant who could not physically access the courthouse in order to defend himself. In terms that could also apply to appointment of counsel, the brief states, ‘the right of equal and effective access to the courts is a core aspect of constitutional guarantees and is essential to ensuring the proper administration of justice.’ ABA Amicus Brief in *Tennessee v. Lane* at 16.

Echoing the Association’s stance in *Lassiter*, the brief continued ‘the right of access to the courts . . . is founded in the Due Process Clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights . . . [W]hen important interests are at stake in judicial proceedings, the Due Process Clause requires more than a theoretical right of access to the courts; it requires *meaningful* access. . . To ensure meaningful access, particularly when an individual faces the prospect of coercive State deprivation through the judicial process of life, liberty, or property, due process often requires the State to give a litigant affirmative assistance so that he may participate in the proceedings if he effectively would be unable to participate otherwise.’ *Id.* at 17-18 (internal citations omitted).

The proposed Model Access Act furthers the policy adopted by the House of Delegates in 2006 and directly serves the fundamental goals of the Association. Goal IV, which is to “Advance the Rule of Law,” has as its fourth objective that the ABA “[a]ssure meaningful access to justice for all persons.”

### **Since 2006, Progress In Meeting the Civil Need of Low-Income Individuals Has Been Slow While the Need Has Increased.**

Since adoption of Recommendation 112A in 2006, a number of states have taken steps to implement a state-funded civil right to counsel in civil cases involving basic human needs. Perhaps the most significant progress to date has been in the State of California which, with enactment of the *Sargent Shriver Civil Counsel Act*, directed the development of one or more pilot projects in selected courts to “provide representation of counsel for low-income persons who require legal services in civil matters involving housing-related matters, domestic abuse and civil harassment restraining orders, probate conservatorships, guardianships of the person, elder abuse, or actions by a parent to obtain sole legal or physical custody of a child...”<sup>3</sup>

While other states have recognized through legislative enactment or judicial decision a right to counsel in limited circumstances – primarily involving termination of parental custody – and

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Representation of the Alleged Incompetent ... 1. Counsel as advocate for the respondent should be appointed in every case...”

<sup>3</sup> Certain sections of the proposed ABA Model Access Act are based on provisions of the *California State Basic Access Act*, which itself sought to implement the “right to counsel and many of the policy choices reflected in the resolution passed by the ABA House of Delegates in August, 2006,” as well as on provisions of the *Sargent Shriver Civil Counsel Act*.



other pilot projects directed at specific basic needs, such as loss of housing, have been developed largely with private funding in New York City and Massachusetts, by and large the urgent need of low-income individuals for representation of counsel when their rights to health, safety, shelter and sustenance are threatened in adversarial proceedings, remains unmet. Indeed, the 2009 update by Legal Services Corporation of its 2005 Report, *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*, confirms that “there continues to be a major gap between the civil legal needs of low-income people and the legal help that they receive.”

The 2009 update from LSC noted:

*New data indicate that state courts, especially those courts that deal with issues affecting low income people, in particular lower state courts and such specialized courts as housing and family courts, are facing significantly increased numbers of unrepresented litigants. Studies show that the vast majority of people who appear without representation are unable to afford an attorney, and a large percentage of them are low-income people who qualify for legal aid. A growing body of research indicates that outcomes for unrepresented litigants are often less favorable than those for represented litigants.*

(Italics added). Not surprisingly, as the worst recession in decades continues to grip the nation, millions of individuals who can least afford it have lost their principal source of income -- their employment. The impact is being felt in state courts as more and more individuals without means of support or the ability to afford a lawyer appear without counsel, or *pro se*, for proceedings involving essential needs such as protection of shelter, protection from physical abuse, access to health care benefits, and deprivation of critical financial benefits.

The problems for state courts caused by the recession are exacerbated in at least two more ways. First, many state and local governments are facing severe revenue shortfalls. In some instances, those states are seeking to meet their budget challenges in part by reducing funding to the very courts now faced with a dramatic increase in self-represented litigants seeking to avoid loss of shelter as well as means of sustenance and safety. Second, the recession also has severely impacted the availability of IOLTA funds, a critical source of revenue for many legal services programs, due to the sharp decline in short-term interest rates paid on deposits in those accounts.

Even prior to the recession, based on *pro se* statistics from state courts, a September 2006 memorandum of the National Center for State Courts reported that:

*Courts are continuing to see an increase in the numbers of litigants who represent themselves. Self-represented litigants are most likely to appear without counsel in domestic-relations matters, such as divorce, custody and child support, small claims, landlord/tenant, probate, protective orders, and other civil matters. While national statistics on the numbers of self-represented litigants are not available, several states*

*and many jurisdictions keep track of the numbers of self-represented litigants in their courts.*<sup>4</sup>

(Italics added). Among the pre-recession state court statistics set forth in the 2006 NCSC memorandum were these:

- In Utah, a 2006 report found that in divorce cases, 49 percent of petitioners and 81 percent of respondents were self represented. Eighty percent of self-represented people coming to the district court clerk’s office seek additional help before coming to the courthouse.
- A January 2004 report in New Hampshire found that, in the district court, one party is *pro se* in 85 percent of all civil cases and 97 percent of domestic abuse cases. In the superior court, one party is *pro se* in 48 percent of all civil cases and almost 70 percent in domestic relations cases.
- In California, a 2004 report found more than 4.3 million court users are self-represented. In family law cases, 67 percent of petitioners are self-represented at the time of filing and 80 percent are self-represented at disposition for dissolution cases. In unlawful detainer cases, 34 percent of petitioners are self-represented at filing and 90 percent of defendants are self-represented.

The ABA, working together with Legal Services Corporation, State Bar Associations and other interested groups, has achieved some success in seeking increased Congressional funding to LSC. The increase in Congressional appropriations to LSC, however, remains far below the amount requested by the LSC Board to meet the need that existed even before the recession, let alone the greater level of need that exists today. The ABA Governmental Affairs Office reports that:

For FY 2009, Congress provided a much-needed \$40 million increase, raising LSC’s funding level to \$390 million. Yet, this is still significantly less than the amount appropriated in FY 1995, which would be about \$578 million adjusted for inflation, and even further below the inflation-adjusted amount appropriated in FY 1981--\$749 million. The President is requesting another \$45 million increase, to \$435 million; the bipartisan LSC Board recommends \$485.1 million for FY 2010 in its attempt to close the justice gap over the next several years.<sup>5</sup>

When combined with the substantial reduction in IOLTA funds available to many legal services programs, financial resources available to existing legal services programs remain woefully short of the levels needed to adequately serve the unmet need of low-income individuals. Indeed, the LSC 2009 update reports that, “*Data collected in the spring of 2009 show that for every client served by an LSC-funded program, one person who seeks help is turned down because of*

<sup>4</sup> Madelynn Herman, Self Representation Pro Se Statistics Memorandum, September 25, 2006, <http://www.ncsconline.org/wc/publications/memos/prosestatsmemo.htm#other>.

<sup>5</sup> [http://www.abanet.org/poladv/priorities/legal\\_services/2009apr14\\_lsconepager.pdf](http://www.abanet.org/poladv/priorities/legal_services/2009apr14_lsconepager.pdf)

*insufficient resources.”* Moreover, the referenced data only address individuals who seek assistance at LSC-funded entities. The update concludes, as did the original 2005 report, that “*state legal needs studies conducted from 2000 to 2009 generally indicate that less than one in five low-income persons get the legal assistance they need.*” (Italics added).

### **The Model Access Act is Needed to Provide a Mechanism for State and Territorial Governments to Address the Need for Civil Representation.**

With this Recommendation, the ABA again will help to move the nation forward in meeting its commitment to the ideal of equal justice under law by providing a model act that implementing jurisdictions may use as a starting point to turn commitment into action. The Model Act complements the ABA’s support of existing LSC-funded and other local legal aid programs by establishing a statutory right to counsel in those basic areas of human need identified in the 2006 Resolution and by providing a mechanism for implementing that right, with Commentary that acknowledges and identifies alternatives to meet local needs by jurisdictions considering implementation of the Model Act.

By providing a Model Access Act, the ABA will assist interested legislators with the means to introduce the concept and begin discussions within their jurisdictions that will lead to implementation of a statutory right to counsel. Although budget concerns might limit the ability of some jurisdictions to implement the Model Access Act, some states may choose to implement a pilot project to provide counsel and develop additional data on a limited range of cases, such as evictions or child custody proceedings as set forth in the proposed Model Access Act.

The Working Group has solicited comment from the legal services community and others throughout the nation. Many individuals and groups generously responded with suggestions and comments, all of which have been carefully considered by the Working Group, and many of which have been adopted in whole or in part in the proposed Model Access Act. The Working Group benefitted as well from thoughtful comments by four individual members of the legal services community who counsel against adoption of the proposed Model Access Act out of genuine concern that it may be premature, and who suggest that further analysis and data are needed that can best be developed on a state-by-state basis rather than through a uniform national approach. After careful consideration of these comments, the Working Group concluded that (i) in light of existing data that demonstrate an extraordinary and growing number of low-income persons who today face civil adversary proceedings on matters of basic human need, and (ii) because the proposed Model Access Act, together with the Commentary thereto, explicitly contemplates and accommodates modification of its provisions to meet the local needs and circumstances of implementing jurisdictions, it is critical to move forward at this time. Indeed, adoption of the proposed Model Access Act may well spur the discussion, experimentation and data gathering on a state-by-state basis needed to effectively address the vast unmet need in this country.

### **Overview of The Model Access Act.**

The Model Act is structured in five sections. *Section 1* sets forth legislative findings, *Section 2* provides definitions, *Section 3* defines the scope of the right to public legal services, *Section 4* establishes a State Access Board as the entity that will administer the program and *Section 5* creates a State Access Fund to provide funding mechanism while leaving to local officials the decision on the source of funding.

The legislative findings recognize in *Section 1.A* the “substantial, and increasingly dire, need for legal services....” *Section 1.C* makes the essential finding that, “*Fair and equal access to justice is a fundamental right in a democratic society. It is especially critical when an individual who is unable to afford legal representation is at risk of being deprived of certain basic human needs....*” (Italics added). Moreover, as the preliminary results of a survey of state court judges undertaken by the ABA Coalition for Justice plainly demonstrates, providing a right to counsel to low-income persons “will result in greater judicial efficiency by avoiding repeated appearances and delays caused by incomplete paperwork or unprepared litigants, will produce fairer outcomes, and will promote public confidence in the systems of justice.” *Section 1.F*.

Importantly, *Section 1.G* makes it clear that funding provided under the Model Act “*shall not reduce either the amount or sources of funding for existing civil legal services programs below the level of funding in existence on the date that this Act is enacted,*” and that “[*t*]his Act shall not supersede the local or national priorities of legal services programs in existence on the date that this Act is enacted.”

The definitions set forth in *Section 2* explain, among other things, the scope of the “Basic human needs” for which the Act is intended to provide a right to counsel. These include the five areas identified in 2006 Report 112A: shelter, sustenance, safety, health, and child custody. Definitions are provided for each of those five categories of need and, as it does throughout the Act, the Commentary following *Section 2* recognizes that, “*Adopting jurisdictions may wish to make modifications, based on the unique circumstances applicable in their communities,*” to the list of needs. Also of note is the definition of “Limited scope representation,” may be provided “*only to the extent permitted by Rule 1.2(c) of the ABA Model Rules of Professional Conduct or the jurisdiction’s equivalent, and when such limited representation is sufficient to afford the applicant fair and equal access to justice consistent with criteria set forth in Section 3 hereof.*” (Italics added).

*Section 3* defines the scope of the right to public legal services and requires the applicant to meet both financial eligibility and minimal merits requirements. The financial eligibility requirement suggested in *Section 3.D* is 125 percent of the federal poverty level. However, the Commentary at the end of *Section 3* notes that implementing jurisdictions may set the standard to target a larger percentage of the population unable to afford legal services and also use a formula that “takes into account other factors relevant to the financial ability of the applicant to pay for legal services.” Those factors may include the applicant’s assets as well as medical or other extraordinary ongoing expenditures for basic needs.

The merits requirement represents an initial determination, to be made by the State Access Board, that plaintiffs or petitioners have “a reasonable possibility of achieving a successful

outcome.” Defendants or respondents must be found to have a “non-frivolous defense.” A favorable initial merits determination is subject to further review once counsel is appointed and makes a thorough investigation of the claim or defense. However, where a judge, hearing officer or arbitrator initiates a request to the State Access Board that counsel be provided under the Model Act, the Board determines the financial eligibility of the applicant and whether the subject matter of the case involves a basic human need as defined therein, but there no further merits analysis is undertaken by the Board. It is assumed in such cases that the referring judge, hearing officer or arbitrator has made such a determination.

As for the availability of “limited scope representation,” *Section 3.B.iv* spells out that such limited services may be provided where it “is required because self-help assistance alone would prove inadequate or is not available and where such limited scope representation is sufficient in itself or in combination with self-help assistance to provide the applicant with effective access to justice in the particular case in the specific forum.” However, if the forum is one in which representation can only be provided by licensed legal professionals, limited scope representation is only permitted under the circumstances set forth in *Section 3.B.iii*.

*Section 4* provides the mechanism for administration of the Model Act. It creates a State Access Board within the state judicial system, while again recognizing in the Commentary following *Section 4* that a different model may be appropriate based on local needs and resources. The Board’s duties are set forth in *Section 4.E*, and include ensuring eligibility of applicants, establishing, certifying and retaining specific organizations to make eligibility determinations and scope of service determinations, and establishing a system for appeals of determinations of ineligibility. As detailed in the Commentary, the emphasis in providing such services is “on effective, cost-efficient services,” which means the Board may contract with local non-profit legal aid organizations, with private attorneys, or both. The determination will depend on local circumstances and will take into account limitations on the ability of local legal aid organizations to provide services either due to an ethical conflict, legal prohibitions, lack of sufficient salaried attorneys, or where it lacks particular expertise or experience.

*Section 5* creates a funding mechanism, the State Access Fund, but in recognition of the very different and often challenging circumstances faced in many different areas of the nation, leaves entirely to implementing jurisdictions the responsibility to identify funding sources. The Commentary following *Section 5* cautions that while implementing jurisdictions may look to any available source of revenues, it “*should take care to maintain current financial support to existing legal aid providers.*” (Italics added).

## **Conclusion**

We return to the eloquence of the Report submitted in support of Recommendation 112A in 2006, which continues to have great relevance today in light of the economic crisis that has left even more individuals with personal crises involving basic human needs, but without the resources to retain counsel or a source of publicly-funded counsel:

In a speech at the 1941 meeting of the American Bar Association, U.S. Supreme Court Justice Wiley Rutledge observed:

“Equality before the law in a true democracy is a matter of right. It cannot be a matter of charity or of favor or of grace or of discretion.”

If Justice Rutledge’s self-evident statement required proof, the past 130 years of legal aid history have demonstrated its truth. Not only has equality before the law remained merely a matter of charity in the United States, but that charity has proved woefully inadequate. The lesson from the past 130 years is that justice for the poor as a matter of charity or discretion has not delivered on the promises of “justice for all” and “equal justice under law” that form the foundation of America’s social contract with all its citizens, whether rich, poor, or something in between. The Task Force and other proponents of this resolution are convinced it is time for this nation to guarantee its low income people equality before the law as a matter of right, including the legal resources required for such equality, beginning with those cases where basic human needs are at stake. We are likewise convinced this will not happen unless the bench and bar take a leadership role in educating the general public and policymakers about the critical importance of this step and the impossibility of delivering justice rather than injustice in many cases unless both sides, not just those who can afford it, are represented by lawyers.

The members of the ABA Working Group on Civil Right to Counsel and the co-sponsors of this Recommendation and Report strongly urge the adoption of the proposed ABA Model Access Act in order to implement the ABA’s unanimously-adopted 2006 policy and help to turn the legal profession’s commitment to civil right to counsel into reality.

As it has done on countless occasions during the past 132 years, the ABA must again provide leadership at a time when its members and the people they care about in communities throughout the nation need an effective and meaningful method for providing legal representation to low-income persons in order to secure rights that are basic to human existence.

Respectfully submitted,  
Lorna G. Schofield, Chair  
Section of Litigation<sup>6</sup>

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<sup>6</sup> **Members of the ABA Working Group on Civil Right to Counsel (ABA Entities are indicated for identification purposes only):**

Michael S. Greco, Chair (Past President of the American Bar Association)  
Terry Brooks (Counsel, Standing Committee on Legal Aid and Indigent Defendants)  
Peter H. Carson (Section of Business Law)  
Shubhangi Deoras (Consultant, Standing Committee on Legal Aid and Indigent Defendants)  
Margaret Bell Drew (Commission on Domestic Violence)  
Justice Earl Johnson, Jr. (Ret.) (Standing Committee on Legal Aid and Indigent Defendants)  
Wiley E. Mayne, Jr. (Section of Litigation)  
Neil G. McBride (Standing Committee on Legal Aid and Indigent Defendants)  
JoNel Newman (Commission on Immigration)  
Robert L. Rothman (Section of Litigation)

GENERAL INFORMATION FORM

Submitting Entity: American Bar Association Section of Litigation

Submitted By: Lorna Schofield, Chair, Section of Litigation

1. Summary of Recommendation(s).

The Recommendation proposes that the ABA adopts the “ABA Model Access Act,” a model statute for implementing jurisdictions to establish and administer a civil right to counsel consistent with ABA policy. The “ABA Model Access Act” is closely related to another resolution being submitted by the Standing Committee on Legal Aid and Indigent Defendants (a resolution seeking adoption of the “ABA Basic Principles of a Right to Counsel in Civil Legal Proceedings” which represent an effort to state, in a clear and accessible fashion, the fundamental requirements for effectively providing representation in certain high-priority civil proceedings to persons unable to afford an attorney, in order to help educate and guide the policymakers and other allies (including non-lawyers) whose support is critical for the successful establishment and implementation of civil right to counsel systems).

2. Approval by Submitting Entity.

The ABA Section of Litigation is submitting this Report with Recommendation and voted to approve the Report with Recommendation during the meeting of its Council on April 24, 2010.

3. Has this or a similar recommendation been submitted to the ABA House of Delegates or Board of Governors previously?

In August 2006, the ABA House of Delegates unanimously adopted Report and Recommendation 112A, which called on federal, state and territorial governments to create a right to publicly funded counsel for low-income individuals when faced with a civil adversary proceeding involving basic human needs such as shelter, safety, health, sustenance and child support.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

This Report with Recommendation Report was developed by an ABA Working Group on Civil Right to Counsel including representatives from the Section of Litigation, the Standing Committee on Legal Aid and Indigent Defendants, and other entities, in response to a request from ABA President Carolyn Lamm to assist in identifying ways to

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Judge Edward Schoenbaum (Judicial Division; Coalition for Justice)  
 Robert E. Stein (Standing Committee on Legal Aid and Indigent Defendants)  
 Michelle Tilton (Section of Tort Trial and Insurance Practice)  
 Robert A. Weeks (Standing Committee on Legal Aid and Indigent Defendants)  
 Lisa C. Wood (Section of Litigation)

advance the ABA's existing policy on civil right to counsel, adopted as Report with Recommendation 112A by the ABA House of Delegates in August 2006.

5. What urgency exists which requires action at this meeting of the House?

Since 2006, the progress in meeting the civil legal needs of low-income individuals has been slow while the need for such legal assistance has increased. Indeed, the 2009 update by Legal Services Corporation of its 2005 Report, *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*, confirms that "there continues to be a major gap between the civil legal needs of low-income people and the legal help that they receive." Not surprisingly, as the worst recession in decades continues to grip the nation, millions of individuals who can least afford it have lost their principal source of income -- their employment. The impact is being felt in state courts as more and more individuals without means of support or the ability to afford a lawyer appear without counsel, or *pro se*, for proceedings involving essential needs such as protection of shelter, protection from physical abuse, access to health care benefits, and deprivation of critical financial benefits. Further, many state and local governments are facing severe revenue shortfalls. In some instances, those states are seeking to meet their budget challenges in part by reducing funding to the very courts now faced with a dramatic increase in self-represented litigants seeking to avoid loss of shelter as well as means of sustenance and safety. Moreover, the recession also has severely impacted the availability of IOLTA funds, a critical source of revenue for many legal services programs, due to the sharp decline in short-term interest rates paid on deposits in those accounts.

The ABA, working together with Legal Services Corporation, State Bar Associations and other interested groups, has achieved some success in seeking increased Congressional funding to LSC. The increase in Congressional appropriations to LSC, however, remains far below the amount requested by the LSC Board to meet the need that existed even before the recession, let alone the greater level of need that exists today. When combined with the substantial reduction in IOLTA funds available to many legal services programs, financial resources available to existing legal services programs remain woefully short of the levels needed to adequately serve the unmet need of low-income individuals.

With this Recommendation, the ABA again will help to move the nation forward in meeting its commitment to the ideal of equal justice under law by providing a model act that implementing jurisdictions may use as a starting point to turn commitment into action. The Model Act complements the ABA's support of existing LSC-funded and other local legal aid programs by establishing a statutory right to counsel in those basic areas of human need identified in the 2006 Resolution and by providing a mechanism for implementing that right, with Commentary that acknowledges and identifies alternatives to meet local needs by jurisdictions considering implementation of the Model Act. By providing a Model Access Act, the ABA will assist interested legislators with the means to introduce the concept and begin discussions within their jurisdictions that will lead to implementation of a statutory right to counsel. Although budget concerns might limit the ability of some jurisdictions to implement the Model Access Act, some states may choose to implement a pilot project to provide counsel and develop additional data on a limited



range of cases, such as evictions or child custody proceedings as set forth in the proposed Model Access Act.

6. Status of Legislation. (If applicable.)  
Not applicable.
7. Cost to the Association. (Both direct and indirect costs.)  
Not applicable.
8. Disclosure of Interest. (If applicable.)  
Not applicable.
9. Referrals. (List entities to which the recommendation has been referred, the date of referral and the response of each entity if known.)  
The Report with Recommendation was referred to the entities below between April 20-26, 2010 for co-sponsorship; entities agreeing to co-sponsors are indicated:
  - a. Section of Business Law
  - b. Commission on Domestic Violence
  - c. Commission on Immigration (co-sponsor)
  - d. Judicial Division (co-sponsor)
  - e. Coalition for Justice (co-sponsor)
  - f. Section of Tort Trial and Insurance Practice (co-sponsor)
  - g. Section of Individual Rights and Responsibilities
  - h. Section of Family Law
  - i. Young Lawyers Division
  - j. Section of Criminal Justice
  - k. Section of Administrative Law and Regulatory Practice
  - l. Special Committee on Death Penalty Representation (co-sponsor)
  - m. IOLTA Commission
  - n. Section of Labor and Employment Law
  - o. Commission on Law and Aging
  - p. Steering Committee on Unmet Legal Needs of Children
  - q. Forum on Affordable Housing and Community Development Law
  - r. Commission on Homelessness and Poverty (co-sponsor)
  - s. Coordinating Council for the Justice Center
  - t. Standing Committee on Pro Bono and Public Service
  - u. Commission on Youth at Risk.
  - v. Senior Lawyers Division (co-sponsor)
  - w. Law Student Division
  - x. Standing Committee on Legal Aid and Indigent Defendants (co-sponsor)
  - y. Section of State and Local Government Law (5/21/10)
10. Contact Person. (Prior to the meeting. Please include name, address, telephone number and email address.)

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11. Contact Person. (Who will present the report to the House. Please include email address and cell phone number.)

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## EXECUTIVE SUMMARY

### 1. Summary of the Recommendation

The Recommendation proposes that the ABA adopts the “ABA Model Access Act,” a model statute for implementing jurisdictions to establish and administer a civil right to counsel, consistent with ABA policy (Report with Recommendation 112A, adopted unanimously by the House of Delegates in August 2006).

Recommendation 112A called on federal, state and territorial governments to create a right to publicly funded counsel for low-income individuals when faced with a civil adversary proceeding involving basic human needs such as shelter, safety, health, sustenance and child support.

### 2. Summary of the Issue that the Resolution Addresses

Since the ABA’s adoption of Recommendation 112A in 2006, the progress in meeting the civil legal needs of low-income individuals has been slow while the need for such legal assistance has increased. Indeed, the 2009 update by Legal Services Corporation of its 2005 Report, *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*, confirms that “there continues to be a major gap between the civil legal needs of low-income people and the legal help that they receive.”

The ABA, working together with Legal Services Corporation, State Bar Associations and other interested groups, has achieved some success in seeking increased Congressional funding to LSC. The increase in Congressional appropriations to LSC, however, remains far below the amount requested by the LSC Board to meet the need that existed even before the worst recession in decades hit the nation, let alone the greater level of need that exists today. Given the recession’s continuing impact on millions of individuals and state and local government budgets, combined with the substantial reduction in IOLTA funds available to many legal services programs, financial resources available to existing legal services programs remain woefully short of the levels needed to adequately serve the unmet need of low-income individuals.

### 3. Please Explain How the Proposed Policy Position will Address the Issue

With this Recommendation, the ABA again will help to move the nation forward in meeting its commitment to the ideal of equal justice under law by providing a model act that implementing jurisdictions may use as a starting point to turn commitment into action. The Model Act complements the ABA’s support of existing LSC-funded and other local legal aid programs by establishing a statutory right to counsel in those basic areas of human need identified in the 2006 Resolution and by providing a mechanism for implementing that right, with Commentary that acknowledges and identifies alternatives to meet local needs by jurisdictions considering implementation of the Model Act. By providing a Model Access Act, the ABA will assist interested legislators with the means to

introduce the concept and begin discussions within their jurisdictions that will lead to implementation of a statutory right to counsel. Although budget concerns might limit the ability of some jurisdictions to implement the Model Access Act, some states may choose to implement a pilot project to provide counsel and develop additional data on a limited range of cases, such as evictions or child custody proceedings as set forth in the proposed Model Access Act.

4. Summary of Minority Views  
None identified to date.