

# DIALOGUE

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## News and Perspectives from the ABA Division for Legal Services

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**Access to Justice Commissions and IOLTA Programs:  
Helping One Another to Help More Clients**

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*By Bob Echols*

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The growth of state Access to Justice (ATJ) commissions has been one of the most striking and consequential justice-related developments of the past decade. As of early 2010, 24 states and the District of Columbia have established one of these blue-ribbon commissions. With a few exceptions, these commissions were all created in the past decade—the majority in the past five years. Several more states are in the planning phase.

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**ATJ and  
IOLTA Partner  
to Increase  
Access to Civil  
Justice**

The idea of the organized bar, the courts, legal aid providers, funders, and other stakeholders working together to expand access to civil justice for low-income and disadvantaged people is not new. What is novel about ATJ commissions is that they institutionalize these relationships, typically under the aegis of the state supreme court, providing the group's recommendations with built-in visibility and credibility and facilitating their implementation.

**From the Chair**

**Grantee  
Spotlight**

Interest on Lawyers' Trust Accounts (IOLTA) programs have played a key role in the development of many existing ATJ commissions, sometimes providing important seed funding to get a commission going. In many states they collaborate closely with the commission on an ongoing basis. Often they are directly or indirectly represented on the commission. This article provides some examples of how ATJ commissions and IOLTA programs are working in tandem to expand access to civil justice in their states.

**News and  
Notes**

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**Shared Goal, Different Roles**

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Although they share fundamental goals, ATJ commissions and IOLTA programs have different missions and roles. Speaking broadly, commissions have a "big picture" charge: to convene the key players; to assess needs; to identify gaps in the system; to make recommendations about ways to fill those gaps and expand access to civil justice; to promote and support efforts to do so; and to serve as a voice constantly reinforcing the principle of equal justice.

While commissions have no formal authority, other than whatever may be specifically granted to them by the state's supreme court, they are typically accorded a high level of "moral authority" by stakeholders, who defer to and act consistently with the commission's goals and recommendations.

IOLTA programs, in contrast, have specific program funding, oversight and evaluation missions and authority, as well as professional expertise in these areas. As a result, they can have a direct impact on the provider community.

IOLTA programs also frequently have responsibilities relating to needs assessment, planning and public awareness, areas that relate to the commission's charge. Indeed, in states without commissions, the IOLTA program may be taking the lead in these areas, as well as in seeking additional resources for civil legal aid. In states where IOLTA programs have initiated the effort to launch a commission, their decision to do so usually resulted from a recognition that a commission would provide higher visibility and more effectiveness for such efforts.

Ideally, a state's ATJ commission and IOLTA program will work synergistically, with each entity complementing the role of the other, thereby reinforcing its mission and maximizing the impact of what it does.

One caveat: *every state is different*. This may seem like a truism, but in fact the relationships among the various entities involved in ATJ efforts play out so differently in every state that there is no single ideal model that applies everywhere. Nevertheless, there are useful lessons to be learned from the collaborative efforts described below.

### **"Show Me the Money"**

Some of the biggest successes of ATJ commissions have been in helping to increase funding for civil legal aid, which is, after all, a core mission of IOLTA. Commissions have been extremely active in advocacy for state legislative funding (appropriations and filing fee and fine add-ons), attorney registration fee/bar dues surcharges, *cy pres* rules, and *pro hac vice* fees. With their supreme court, bar, and legislative connections, commissions are ideally situated to undertake this role. In California alone, efforts led by the ATJ Commission have resulted in new funding that has totaled more than \$100 million over a decade. Recently – in Arkansas and Texas, for example – commissions have successfully led efforts to obtain state funding to make up for potentially devastating IOLTA shortfalls.

IOLTA programs have been key partners in many of these efforts, including the recent Texas campaign. (In states without commissions, they have sometimes taken the leading role themselves, as with several recent funding successes in Pennsylvania.) Often the newly generated revenues

are routed to the IOLTA program for distribution through its grantmaking process. This has been the case in Texas, California, and the District of Columbia, where the ATJ Commission led the effort that resulted in a new \$3.2 million appropriation from the City Council beginning in 2006 (subsequently increased, but reduced in the current funding cycle).

In a number of states (recently, Maine and Texas), commissions partnered with IOLTA programs in leading the effort for new rules to expand IOLTA participation and enhance revenues such as conversion to mandatory IOLTA and adoption of interest rate comparability. As part of their public awareness efforts, commissions can also help to educate attorneys about the importance of IOLTA and its grantees.

Commissions and IOLTA programs have also worked together on private bar fundraising. In California, the Access to Justice Commission and the IOLTA program jointly oversee the outreach campaign for the Justice Gap Fund, which solicits voluntary contributions to the IOLTA program as part of bar dues payments. Maine's Justice Action Group launched a highly successful statewide, coordinated private bar fundraising campaign in 2004. However, while they may lend their prestige and contacts to such campaigns, commissions are not structured to run the campaigns themselves, and are likely to spin them off as a separate entity, as was the case in Maine. The IOLTA program can be of assistance in developing the campaign – as the Maine Bar Foundation was – and indeed might operate the campaign itself.

Commissions have also worked with IOLTA programs to mobilize and maximize the legal community's financial and in-kind support for civil aid. For example, in Texas, the ATJ commission obtained pro bono services from the chief information officers of leading law firms, who spent more than a year surveying legal aid organizations about their technology programs and creating a technology plan to address the deficits. Based on the group's recommendations, the Texas Access to Justice Foundation (the IOLTA program) purchased the necessary equipment in bulk and donated it to the legal aid offices. In the District of Columbia, the D.C. Bar Foundation (the IOLTA program) has secured the pro bono services of a prominent policy firm to support the ATJ commission's communications and public funding agenda.

### **Getting the Message Out**

ATJ commissions also seek to raise awareness about civil legal needs, barriers to the justice system, and the benefits of civil legal aid, through regional hearings, reports, press events, editorial campaigns, videos and other communications efforts. These efforts have been coordinated with and/or supported by IOLTA programs. In Texas, the ATJ commission and the ATJ Foundation (IOLTA) jointly adopted a communications plan, and communications efforts are staffed out of the Foundation. In Hawaii, the ATJ Commission recently sponsored a "Summit Conference" on ATJ issues, funded by the Hawaii Bar Foundation (IOLTA). ATJ Commissioners and

IOLTA staff have written short articles for Hawaii State Bar news publications on individual legal service programs, activities of the Commission, financial issues facing legal service providers, and law firm pledges for 100 percent pro bono participation.

By involving more private attorneys in the delivery of civil legal aid, increased pro bono participation also helps to get the Access to Justice message out and build support for legal aid among the bar, thereby furthering the goals of IOLTA. Virtually every ATJ commission has been active in efforts to expand pro bono participation and services, through new rules, recruitment campaigns and recognition awards, support programs for volunteers, and similar measures. Sometimes these pro bono efforts can result in powerful new allies for IOLTA: for example, members of the Texas ATJ Commission's Corporate Counsel Committee, which seeks to expand pro bono service and financial support for legal aid by corporate counsel, were extremely influential in the successful legislative campaign to obtain state funding to replace the IOLTA shortfall.

While many states are facing a crisis in legal aid, the good news is that interest in Access to Justice issues on the part of the bar and the courts (and in some cases, the state legislature) has never been higher. The growth of state ATJ commissions, their communications efforts, and the support of those efforts in many states by IOLTA programs has been a key factor in this development.

### **Delivery System Planning and Innovation**

ATJ commissions and IOLTA programs both have important roles to play in the area of delivery system planning, but these roles are fundamentally different and should be mutually reinforcing: the commission works at the "big picture" end of the spectrum; the IOLTA program functions at the programmatic end. The IOLTA program can provide valuable input to any planning process and is essential to implementing the commission's recommendations. It is critically important that the two entities coordinate their efforts to avoid duplication and conflicting messages.

In Washington State, the IOLTA program formally adopts the commission's state delivery plan as its own, to use as the basis of its funding decisions. In 2007-2008, the New Hampshire Bar Foundation (the IOLTA program) was an active participant in a delivery system planning process involving the three principal providers, convened by the ATJ commission, which resulted in a consensus about ways the programs could rethink their division of labor.

IOLTA programs have supported commission goals by funding innovative pilot projects or by carrying out specific initiatives themselves with IOLTA staff.<sup>1</sup> In the District of Columbia, the ATJ Commission has encouraged providers to streamline intake and referral across the legal services network; the D.C. Bar Foundation has made a grant to a few providers to develop a joint proposal for a shared hotline. In Massachusetts, the IOLTA program, through its staff, has supported a collaborative pilot project

involving the courts, the bar, and legal services providers, to promote “unbundled” legal services, an initiative supported by the Massachusetts ATJ Commission. Specifically, IOLTA staff led the effort to develop training manuals and events for participating attorneys. The Massachusetts ATJ Commission and IOLTA program have also collaborated on “civil Gideon” initiatives. The IOLTA director was the Vice-Chair of the bar’s Civil Right to Counsel Task Force, and a pilot project recommended by the Task Force and supported by the Commission has been launched with IOLTA funding.

IOLTA programs have also provided funding or in-kind support for particular commission activities or projects such as planning processes and reports or legal needs studies. The Maine Bar Foundation provided in-kind support for the state’s long-term planning process and report. Alabama’s legal needs study, originally undertaken and funded by the Alabama Law Foundation (an IOLTA program), was released under the imprimatur of the Access to Justice Commission.

### **Staffing and Other Fiscal Support for ATJ Commissions**

Experience has shown that permanent staffing makes a major difference in the effectiveness of the commission. In a number of states, ATJ staff is funded by, and works out of, the bar or the courts. Where full funding is not available from these sources, IOLTA has sometimes stepped in to fund this key delivery system function, in whole or in part, as it does in Maine, North Carolina, and South Carolina.<sup>2</sup> In the District of Columbia, the D.C. Bar Foundation helped to obtain funding and in-kind support for Commission staffing from major law firms.

In addition, IOLTA programs can assist by serving as the fiscal agent for the commission, since most commissions do not have a formal corporate status. The Maine Bar Foundation provides this service for the Justice Action Group. And, in Texas, the ATJ Foundation (IOLTA) regularly receives donations to fund ATJ Commission initiatives.<sup>3</sup>

### **Synergism at Work**

With their roles clearly defined, with a shared vision and values, working together in coordination, a state’s Access to Justice commission and IOLTA program can maximize their effectiveness in expanding access to civil justice in their state. It’s a two-way street: both entities will benefit. Most importantly, clients will benefit, as more services are made available to more people.

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<sup>1</sup> Some IOLTA programs are limited by statute or rule to a specific funding formula, and thus may not be able to fund Commission initiatives.

<sup>2</sup> While some IOLTA programs may have concerns about providing funds for a staff person who does not serve clients directly, the record of success in states with established ATJ commissions makes it clear that this investment will be paid back many times over.

<sup>3</sup> Conversely, the Foundation serves as the charity of choice for the proceeds from Commission fundraising events, such as a gala dinner held in May 2009.

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