



Access Brief: Access to Justice Commissions

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This Brief was produced by the Center on Court Access to Justice for All (www.ncsc.org/atj), an initiative of the National Center for State Courts (NCSC). The Center offers resources and technical assistance to help judges and courts advance access to justice, especially for poor and low-income individuals. It works closely with the Conference of Chief Justices, the Conference of State Court Administrators and other national court organizations to implement access-to-justice solutions. The Center is supported by the Public Welfare Foundation (PWF).

About the Authors & Reviewers

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Overview

The rapid spread of the Access to Justice Commission model has been one of the most striking and consequential justice-related developments of the past decade. As of July 2014, Access to Justice Commissions have been created in 32 states, the District of Columbia, and Puerto Rico.¹ All but a few of these entities have been created since 2000.² Another half a dozen jurisdictions are exploring the possibility of creating a new commission.³

The Core Concept:
State courts
partnering with other
stakeholders to
expand access to civil
justice

Access to Justice Commissions are blue-ribbon entities that bring together the courts, the bar, civil legal aid providers, and other stakeholders in a coordinated effort to identify and remove barriers to civil justice for low-income and disadvantaged people. They embody shared, ongoing institutional commitments to address access to justice issues in a coordinated and collaborative way, mobilizing the stature of the individual leaders and the highest levels of the courts and bar and other participating institutions to raise the visibility and credibility of these efforts.⁴

In 2010, in an address to the Conferences of Chief Justices and State Court Administrators, Professor Laurence Tribe, then Senior Counselor for Access to Justice for the U. S. Department of Justice, highlighted the importance of Access to Justice Commissions, calling them one of the most important justice-related developments in the past decade and noting that it is the leadership of the chief justices that makes the commissions so successful.⁵ During that meeting, the Conferences passed a resolution supporting “the aspirational goal that every state and United States Territory have an active access to justice commission

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or comparable body.”⁶

Support for new and existing state Access to Justice Commissions is a central element of the Center for Court Access to Justice for All, launched in 2012 by the National Center for State Courts. The Center collaborates with the American Bar Association’s Resource Center for Access to Justice Initiatives, which has provided support to Access to Justice Commissions since 2000. Major grants from the Public Welfare Foundation in 2012 to the NCSC and the ABA recognize the success and value of the Access to Justice Commission model and have enabled the NCSC and the ABA to increase their support for new and existing commissions. The Public Welfare Foundation grant and additional grants from the Kresge Foundation and the Bauman Foundation to the ABA funded a series of small grants in 2012 and 2013 to promote the creation of new Access to Justice Commissions and to encourage existing commissions to expand the scope of their activities and undertake innovative initiatives.⁷

Role of the Supreme Court

Mobilization of the prestige, visibility and credibility of the state Supreme Court (or high court of an equivalent jurisdiction such as the District of Columbia Court of Appeals) is probably the single most important reason behind the success of Access to Justice Commissions. This factor is central to the definition of an Access to Justice Commission.⁸ Most current commissions were created by Supreme Court order or rule.⁹ Supreme Court justices serve as members of or liaisons to the commission in a majority of states.¹⁰ Typically the commission formally reports to the Supreme Court on a regular basis.¹¹ Other

aspects of the Supreme Court’s role play out differently from state to state. In some states, the commission is formally located within the court system.¹² However, most commissions have a more independent status, which can allow them more flexibility in exploring problems and potential solutions.¹³

Notwithstanding these variations, successful Access to Justice Commissions are characterized by strong leadership from the state Supreme Court and a commitment to the role of the commission on the part of the Court.

Other Partners

The essence of the Access to Justice Commission model is partnership. Successful commissions are characterized by recognition on the part of the Court that the other participating institutions are essential partners in expanding access to civil justice. In particular, buy-in and support from the organized bar and the civil legal aid community is essential for success.¹⁴ They should be part of the planning process for creation of a commission, and their role should be reflected in the commission’s structure and membership. In many states, the commission was created by the Supreme Court upon petition of the state bar. The Supreme Court may appoint all members, either directly or on nomination by other stakeholders; or stakeholder entities may be assigned a certain number of seats to appoint. Whatever the appointment model, the key stakeholders should feel that they are represented and have a place at the table. Membership should strike a balance between high-profile leaders and people with knowledge and experience in access to justice issues.¹⁵

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The list of potential members includes representatives of the state Supreme Court, as described above; trial court judges; clerks and court administrators; the state bar/bar association; other organized bar, depending on state circumstances; legal aid providers; legal aid funders; and law schools.¹⁶ Many commissions include legislators, typically one appointed by the leadership of each house.¹⁷ Legislative representation on the commission can be very valuable in the success of legislative initiatives. Some commissions include representatives from federal and tribal courts and representatives of the state executive branch, specifically the governor and attorney general.¹⁸ Some commissions include representatives of stakeholders outside the legal community/government, such as business, church, labor, economic development, social services, health care, and so forth.¹⁹ Civil legal aid providers can be represented by staff or board members.²⁰ In some states, where a state legal aid funder plays a major role in the planning and oversight of civil legal assistance, the funder was deeply involved in planning the new commission and collaborates closely with it.²¹

Staffing

While leadership roles can be filled by volunteers, staffing ensures adequate support, continuity, communications, and continued momentum.²² Ideally, the staff person(s) should have access to justice as a sole, or at least primary, job responsibility and should report directly to the Access to Justice Commission leadership. In practice, this will not always be possible, especially in a smaller state with few resources. Under these circumstances, it may be necessary for someone in an existing staff

position to assume responsibility for staffing the Access to Justice Commission. However, simply adding this responsibility to a staff person's existing duties is unlikely to be successful. Access to Justice Commissions should do whatever they can to find the resources to ensure that their efforts are staffed effectively.²³ The job requires significant interpersonal, communications, and political skills, the capacity to work effectively with a diverse group of volunteers, knowledge of the legal system and an understanding of the legal needs of low-income people. Above all, it is essential that the staff person have the full trust of all the institutional partners. A staff person who is viewed as primarily loyal to one institution (e.g., the bar, the courts, or the provider community) rather than the partnership as a whole, may not be effective.

Leadership

Building an effective structure is not enough. Strong leadership on the part of individuals will always be necessary for an Access to Justice Commission to succeed. In many states, the leadership of strong chairs or co-chairs has been the key factor in the successful launch and progress of an Access to Justice Commission. The Chair is generally a bar leader, judge, or law school official. The position provides a good platform for a strong leader who might otherwise have no prominent role as a spokesperson on statewide access to justice issues.²⁴

Structure and Operation

The structure and operation of Access to Justice Commissions vary from state to state. However, they share certain fundamental characteristics that account for the success of the model:

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- The commission is a formal, “blue-ribbon” entity of many stakeholders. This allows it to maintain a “big-picture” perspective, encompassing the viewpoints and expertise of the different institutions represented on the commission and not limiting its view to that of any one particular institution. Its charge is from and/or recognized by the highest court of the state or equivalent jurisdiction; the highest court and the highest levels of the organized bar are engaged with the commission’s efforts; and the commission reports regularly to the highest court and state bar organization. Active engagement and leadership of the highest court and the highest levels of the organized bar of the state or jurisdiction, who are represented by individuals of stature and commitment, results in a high level of credibility and visibility for commission initiatives.
- Its core charge is to expand access to civil justice at all levels of the system for low-income and disadvantaged people in the state (or equivalent jurisdiction) by assessing their civil legal needs, developing strategies to meet them, and evaluating progress. Its charge may also include expanding access for moderate-income people. A primary focus on overcoming the specific barriers to civil justice created by inability to afford counsel allows the commission to give full consideration to the complexities of these issues and ensures that focus will be maintained on those who are most vulnerable. Disadvantages created by factors such as culture, language, age, and disability are also usually addressed.
- Its primary activities relate to planning, education, resource development, coordination, delivery system enhancement, and oversight; it is not primarily a funder or direct provider of legal assistance. It considers the state’s legal assistance delivery system as a whole, including staffed legal aid programs, support for self-represented litigants, limited scope representation, pro bono services, and other models, as well as potential innovations. Its scope is not limited only to civil legal problems involving litigation in the courts, but encompasses a full range of contexts, including the provision of information about legal rights and responsibilities; negotiation and transactional assistance; administrative proceedings; and advocacy with state and local legislative and administrative bodies.
- It meets on a regular basis and has ongoing responsibility for carrying out its charge. Institutionalization of the commission structure ensures follow-through and ongoing commitment.²⁵

Activities

Access to Justice Commissions have been successful in many of the following areas:

- 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;

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- 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.²⁶

Want to Learn More?

Please visit the NCSC Center for Court Access to Justice for All at www.ncsc.org/atj and the ABA Resource Center for Access to Justice Initiatives at www.ATJsupport.org.

Endnotes

¹ For the history, see Hecht, N. L., and Kilbride, T. H., Access to Justice Commissions: Lessons from Two States, in *Trends in State Courts 2014*, National Center for State Courts, 2014, available at www.ncsc.org/trends; and Gray, K.M., & Echols, R. (2008, Summer). Mobilizing judges, lawyers, and communities: State Access to Justice Commissions. *ABA Judges Journal*, 47 (3), 33-37 (available at <http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/atjresourcecenter/downloads/gravechols.authcheckdam.pdf>). For a list of current Commissions, see ABA Resource Center on Access to Justice Initiatives, State Access to Justice Commissions Directory web page: http://www.americanbar.org/content/aba/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/state_atj_commissions.html

²See Hecht and Kilbride (2014), at endnote 1; see also ABA Resource Center for Access to Justice Initiatives, ATJ Commission Launches by Year, http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/sclaid_atj_comm_launches.pdf.

³See ABA Access to Justice Commission Expansion Project, Expansion Grants web page: http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/grants.html.

⁴ See Hecht and Kilbride (2014) and Gray & Echols (2008, both at endnote 1; see also ABA Resource Center for Access to Justice Initiatives, Defining an ATJ Commission, http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/sclaid_atj_definition_commission.authcheckdam.pdf.

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⁵ Tribe, L. H. (2010, July). Keynote remarks. Presented at the meeting of the Conference of Chief Justices, Vail, CO (available <http://ccj.ncsc.dni.us/speeches/Keynote%20Remarks%20at%20the%20Annual%20Conference%20of%20Chief%20Justices%20to%20deliver.pdf>).

⁶ Conference of Chief Justices and Conference of State Court Administrators. (2010). *Resolution 8: In support of Access to Justice Commissions*. Williamsburg, VA: National Center for State Courts (available <http://ccj.ncsc.dni.us/AccessToJusticeResolutions/resol8Access.html>).

⁷See web page at endnote 3.

⁸See web page at endnote 4 and ABA Resource Center for Access to Justice Initiatives, Hallmarks of an Effective Access to Justice Commission, http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_effective_atj_commissions_hallmarks.authcheckdam.pdf.

⁹ See ABA Resource Center on Access to Justice Initiatives, State-by-State Comparison of Commission Structures, http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_commissions_table.authcheckdam.pdf. The few exceptions include the

Commissions in California, Colorado, and Maine, which were essentially self-convened.

¹⁰ See web page in endnote 9. In the District of Columbia, Kentucky, Mississippi, and Texas, an Associate Justice is a member; in Tennessee and West Virginia, an Associate Justice is a liaison to the Commission; in Maine and Wyoming, an Associate Justice is Chair; in Massachusetts, an Associate Justice is Co-Chair; in Nevada, two Associate Justices are Co-Chairs; in Arkansas and Maryland, a retired Associate Justice is Chair; in North Carolina and South Carolina, the Chief Justice is Chair; in Maine, Maryland, and Wyoming, the Chief Justice is a member. In addition, the State Court Administrator serves

on the Commission in Kentucky, Maryland, and Wyoming.

¹¹See web page in endnote 9.

¹² For example, see Access to Justice Commissions in Connecticut (<http://www.jud.ct.gov/Committees/access/>) and Maryland (<http://www.mdcourts.gov/mdatic/>).

¹³ See Hecht and Kilbride (2014) and web page at endnote 8. For examples, see Access to Justice Commissions in Arkansas (<http://www.arkansasjustice.org/>), District of Columbia (<http://www.dcaccesstojustice.org/>), Hawaii (<http://www.hawaiijustice.org/hawaii-access-to-justice-commission>), Kentucky (<http://courts.ky.gov/commissionscommittees/KAJC/Pages/default.aspx>), and Texas (<http://www.texasatj.org/>). The New Mexico Access to Justice Commission has developed formal state plans on Pro Bono, Civil Legal Aid Delivery, and Self-Represented Litigants, approved by state Supreme Court and implemented/overseen by Commission on behalf of the Court; see <http://www.nmbar.org/Attorneys/AccessJusticeCommission.html>.

¹⁴ See Hecht and Kilbride (2014) and web page at endnote 8; see also ABA Resource Center on Access to Justice Initiatives, Designing and Launching a New Access to Justice Commission, http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_launching_atj_commission.authcheckdam.pdf.

¹⁵ See resources at endnote 14.

¹⁶ See resources at endnote 14.

¹⁷ Examples of states with legislators on the commission include Arkansas (<http://www.arkansasjustice.org/commissioners>), Hawaii (<http://www.hawaiijustice.org/hawaii-access-to-justice-commission/about-the-commission/commissioners>), Kentucky (<http://courts.ky.gov/commissionscommittees/KAJC/Documents/MembershipDirectory.pdf>), Maine (<http://www.mbf.org/justice.htm>),

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Mississippi

(<http://www.msatjc.com/commission.asp>),

New Mexico

(<http://www.nmbar.org/Attorneys/ATJ/AccessToJusticeCommissioners.pdf>), and Wisconsin

(<http://wisatj.org/governance>). Also see endnote 9.

¹⁸ Examples of states with a representative of the Governor and/or a representative of the attorney general on the commission include Hawaii (<http://www.hawaiijustice.org/hawaii-access-to-justice-commission/about-the-commission/commissioners>), Kentucky (<http://courts.ky.gov/commissionscommittees/KAJC/Documents/MembershipDirectory.pdf>), and Texas

(<http://www.texasatj.org/commissioners>). Also see endnote 9.

¹⁹ The Massachusetts Access to Justice Commission includes representatives from hospitals and health insurance providers and the director of a homeless shelter (<http://www.massacesstojustice.org/>). The Mississippi Access to Justice Commission includes representatives from print and broadcast media, hospitals, churches, the NAACP, and the Mississippi Economic Council (<http://www.msatjc.com/commission.asp>). A number of Commissions include a representative of the Chamber of Commerce as well as corporate counsel.

²⁰ Executive directors of civil legal aid programs can serve as regular appointed Commission members or ex officio. In a state with a number of providers, e.g. Texas, an executive director serves on the Commission on a rotating basis. The specific structure is less important than the fact that providers are at the table, to share their expertise and participate in decision-making. See web pages at endnote 14.

²¹ For example, the Texas Access to Justice Foundation and the Massachusetts Legal Assistance Corporation.

²² See resources at endnote 14. A few Commissions (e.g. Hawaii, New Hampshire, and

Wyoming) have been successful without a formal staff capacity; under these circumstances, volunteer leaders generally taken on a broader support role, while stakeholder institutions may provide some in-kind staff support on an occasional basis. ²³ Commissions with full-time (or equivalent) executive directors include Arkansas (funded by legislative appropriation); District of Columbia (funded by contributions from major law firms); North Carolina (funded by an add-on to CLE charges); South Carolina (funded by the Bar Foundation) and Texas (funded by the Texas Bar). In Colorado and Wisconsin, the Commission is staffed by the Bar's pro bono/public services director. In Maryland, Tennessee, and West Virginia, the Commission is staffed out of the Administrative Office of Courts. In Alabama and Montana, the Commission is staffed out of the Bar Foundation, with some funding from other sources.

²⁴ See resources at endnote 14.

²⁵ See web pages at endnote 4 and endnote 8 for characteristics of effective Access to Justice Commissions. In addition, documents from individual states are posted on the ABA web site, under "ATJ Development and Leadership, or at http://www.nlada.org/Civil/Civil_SPAN/SPAN_Library/document_list?topics=0000532&list_title=State+ATJ+Commissions%2FEntities%3A+Structure+and+Creation.

²⁶ This list is intended to highlight the principal areas of Commission activity, not to exclude any potential area. For examples of initiatives currently being undertaken by state Access to Justice Commissions, see ABA Resource Center on Access to Justice Initiatives, Annotated ATJ Commission Programs/ Activities, http://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/2014/ls_sclaid_atj_checklist.pdf.