



FLORIDA COMMISSION

ON ACCESS TO CIVIL JUSTICE

INTERIM REPORT

October 1, 2015

“The American and Florida judicial systems are founded upon the fundamental principle that justice should be accessible to all persons, the advancement of which is of profound interest to the Supreme Court of Florida.”

Administrative Order No. AOSC14-65, November 24, 2014

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FLORIDA COMMISSION

ON ACCESS TO CIVIL JUSTICE

October 1, 2015

Justices
Supreme Court of Florida
500 South Duval Street
Tallahassee, FL 32399-1927

Dear Fellow Justices:

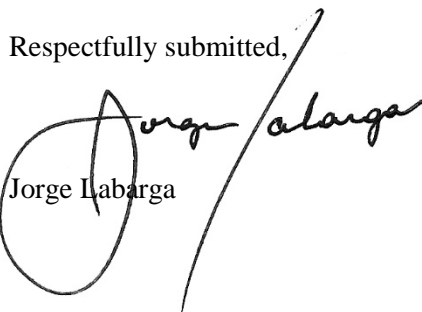
As chair of the Florida Supreme Court Commission on Access to Civil Justice, I am pleased to present this Interim Commission Report for your consideration. This is the first Commission report to the Supreme Court and it contains five recommendations. I am confident the Commission is on the right path to create meaningful access to civil justice for all Floridians.

When the full Commission first met on January 16, 2015, Texas Chief Justice Nathan Hecht shared some sage advice with us: *Focus on achieving early, concrete accomplishments even as you also plan a long-term comprehensive response to the challenge of improving access to civil justice for the people in your state.*

The Commission members have been working diligently with that advice in mind during the 10 months since I signed the administrative order creating this Commission. While much remains to be done, I am proud of the Commission's accomplishments thus far. With this solid foundation, the Commission is ready to continue its efforts to identify, support, and implement initiatives designed to remove barriers and to increase meaningful access to civil justice for all Floridians.

On behalf of the Commission, I am seeking your support of the recommendations by the Commission.

Respectfully submitted,


Jorge Labarga

ATJ Commission

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FLORIDA COMMISSION ON ACCESS TO CIVIL JUSTICE INTERIM REPORT OCTOBER 1, 2015

A. INTRODUCTION AND COMMISSION BACKGROUND

The Florida Commission on Access to Civil Justice was established to study the remaining unmet civil legal needs of disadvantaged, low income, and moderate income Floridians. In conducting its work the Commission has considered Florida's legal assistance delivery system as a whole, including, but not limited to, legal aid programs, resources and support for self-represented litigants, limited scope representation, pro bono services, innovative technology solutions, and other models and potential innovations.

After the establishment of the Commission on November 24, 2014, Chief Justice Jorge Labarga, Commission Chair, established five subcommittees to effectuate the Commission charges. Each subcommittee membership consists of both Commission members and ad hoc members. The five subcommittees, and their respective charges, are:

1. OUTREACH

Charge: Determine strategies to educate: the general public; the judicial, legislative, and executive branches of government; attorneys and law students; civil legal service providers and the pro bono community; the business community; funders; the media; and other stakeholders on access to civil justice issues and the need for a strong civil legal assistance system. Ensure consistent communications messaging from the Commission and all of the subcommittees regarding research, progress of the Commission, reports and recommendations, and deliverables. Identify possible outreach partner organizations for distribution of educational materials and discussion forums.

2. ACCESS TO AND THE DELIVERY OF LEGAL SERVICES

Charge: Identify and examine barriers that impede access to civil justice for disadvantaged, low income, and moderate income Floridians. Determine how to promote coordination of legal services delivery to low income Floridians for optimum efficiency and effectiveness. Identify and build partnerships among the courts, members of the private bar, providers of legal services, and other stakeholders who are engaged in, or interested in expanding, access to civil justice for disadvantaged, low income, and moderate income Floridians.

3. CONTINUUM OF SERVICES

Charge: Consider and evaluate components of a continuum of services for unrepresented litigants, taking into account consumer needs and preferences. Such

components might include interactive forms; unbundled legal services; the involvement of court, law, and public libraries; and other innovations and alternatives.

4. TECHNOLOGY

Charge: Examine ways to leverage technology in expanding access to civil justice for disadvantaged, low income, and moderate income Floridians.

5. FUNDING

Charge: Examine how available resources might be maximized and identify how additional resources might be secured in order to provide stable funding in support of services that enhance access to civil justice for disadvantaged, low income, and moderate income Floridians.

Since its establishment, the Commission and its subcommittees have made significant progress to build a solid foundation toward increased meaningful access to civil justice for Floridians.

In order to begin removing barriers and implementing initiatives to reach its goal of creating meaningful access to civil justice, two essential questions needed to be answered: 1) What is the Florida access to civil justice gap, and 2) who are the underserved Floridians? By answering these questions for the Supreme Court, the Commission will be able to set the stage for bringing about substantial improvements for parents, children, families, and all underserved Floridians who need to access the courts for resolution of their disputes. This interim report begins to answer these two essential questions, and provides the first major steps in the process of removing barriers and providing meaningful access to civil justice in Florida.

B. ESSENTIAL QUESTIONS: 1) WHAT IS THE FLORIDA ACCESS TO CIVIL JUSTICE GAP, AND 2) WHO ARE THE UNDERSERVED FLORIDIANS

The federal and Florida judicial systems are founded upon the fundamental principle that justice should be accessible to all persons regardless of limited economic status or other disadvantage. In criminal cases, legal representation is guaranteed for low-income individuals, but in civil cases, like those related to family matters, homeownership, landlord/tenant, and veterans' benefits, there is no right to representation. According to The Justice Index, a project of the National Center for Access to Justice at the Cardozo Law School, "In our states, more than 80% of the litigants appear without lawyers in matters as important as evictions, mortgage foreclosures, child custody and child support proceedings, and debt collection cases."

Through a variety of means, the courts and other entities within the Florida justice system have endeavored to improve the availability and delivery of legal services to lower income, disadvantaged, and self-represented individuals. However, despite these noteworthy efforts, Floridians continue to encounter barriers when seeking meaningful and informed access to the civil justice system.

Members of the Bar have donated millions of hours of pro bono service each year to citizens in need. In Florida, the Rules of Professional Conduct state that lawyers should aspire to provide 20 hours of pro bono service a year or contribute \$350 to a legal aid organization, Rules Regulating The Florida Bar 4-6.1(b)(1) and (2). In fiscal year 2013-2014, Florida lawyers donated almost two million pro bono hours and donated almost \$5 million to legal services organizations.

Judges and court staff have also been doing what they can to assist those coming into the court system without representation, although this resource is limited by well-established ethical restraints resting on the need for fairness to all parties in a case. Court efforts include providing case managers to assist court users in navigating their cases through the system and providing non-legal advice regarding necessary documentation needed, scheduling, and information on what to expect in the courtroom.

Unfortunately, the Florida courts do not currently have the capacity to collect data at the state level on the extent to which individuals proceed pro se, meaning without representation by an attorney. Local courts collect some data, but this is sporadic with no uniform data elements. For example, the Fourth Judicial Circuit – which comprises Duval, Clay, and Nassau counties – indicates that the circuit experiences about 1,600 pro se walk-ins each month. And that is just one of the 20 judicial circuits in Florida. Certainly, there is not enough capacity through case managers or other court staff to provide direct assistance to this many people.

One indicator of pro se litigant need is the volume of traffic to pages on the self-help portions of the Florida Courts web site over a 12-month period:

- Family Law Forms: more than 509,000 unique page views;
- Small Claims Information: more than 47,000 unique page views;
- Self Help Centers Directory: more than 18,000 unique page views;
- Legal Aid Information: more than 14,000 unique page views;
- Probate Information: more than 13,000 unique page views; and

- Guardianship Information: more than 10,000 unique page views.

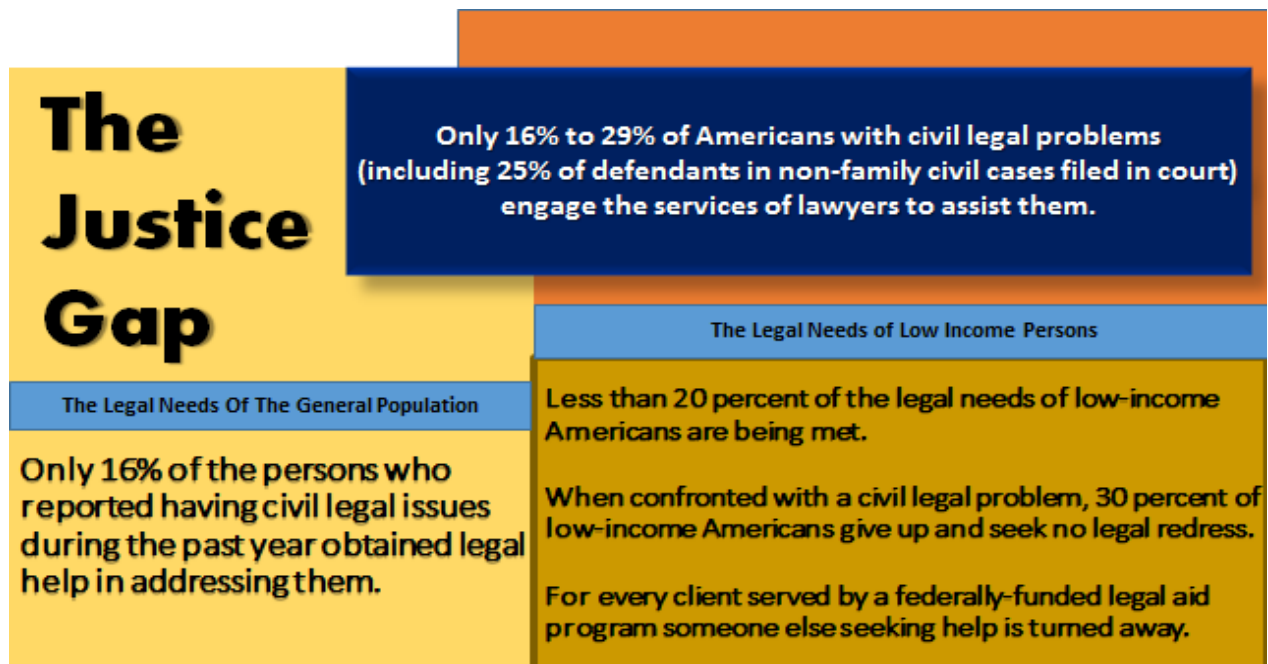
In the past 15 years, Florida circuit court clerks have conducted numerous surveys on the needs of pro se litigants. In addition to being available on the Florida Courts web site, all clerks' offices make available, for a small fee, Florida Supreme Court approved forms for pro se users, in paper and on-line. These forms are packaged and tracked according to case types. According to the Florida Court Clerks and Comptrollers, individuals across the state are most frequently seeking assistance through clerks in the following areas of the law:

- Family - 64%;
- Small Claims - 13%;
- Landlord-Tenant - 10%;
- Domestic Violence Injunctions - 9%; and
- Baker/Marchman Act Proceedings - 3%.

There is, throughout the state, anecdotal evidence that pro se cases have increased, especially with regard to family court cases. The Commission was also informed that mortgage foreclosure cases and landlord-tenant cases more frequently involve self-represented litigants. In addition, it is reported that the courts are seeing more cases in which at the beginning of the case one or both parties are represented, but that one or both of the parties do not retain their legal representation through final disposition of the case. Thus, cases may begin with *represented* litigants but end with *unrepresented* litigants.

Furthermore, vulnerable populations require access to the civil justice system to address their unique needs, but are traditionally underserved. They are likely to have more and more complex, legal problems. To further describe the Floridians who are caught in the civil justice gap:

- More than one million of Florida's children live in poverty and 19,000 live in foster care;
- More than 18% of Floridians are age 65 or older, and 350,000 elder Floridians will suffer emotional or physical mistreatment or some sort of neglect;
- Many veterans who served in combat zones are now confronting civil legal problems as they try to adjust to life back home;
- It is estimated that 2.5 million Florida women will experience domestic violence; and
- Florida's economy, demographics, large number of immigrants, industrial sectors, and other factors make our state attractive to human traffickers.



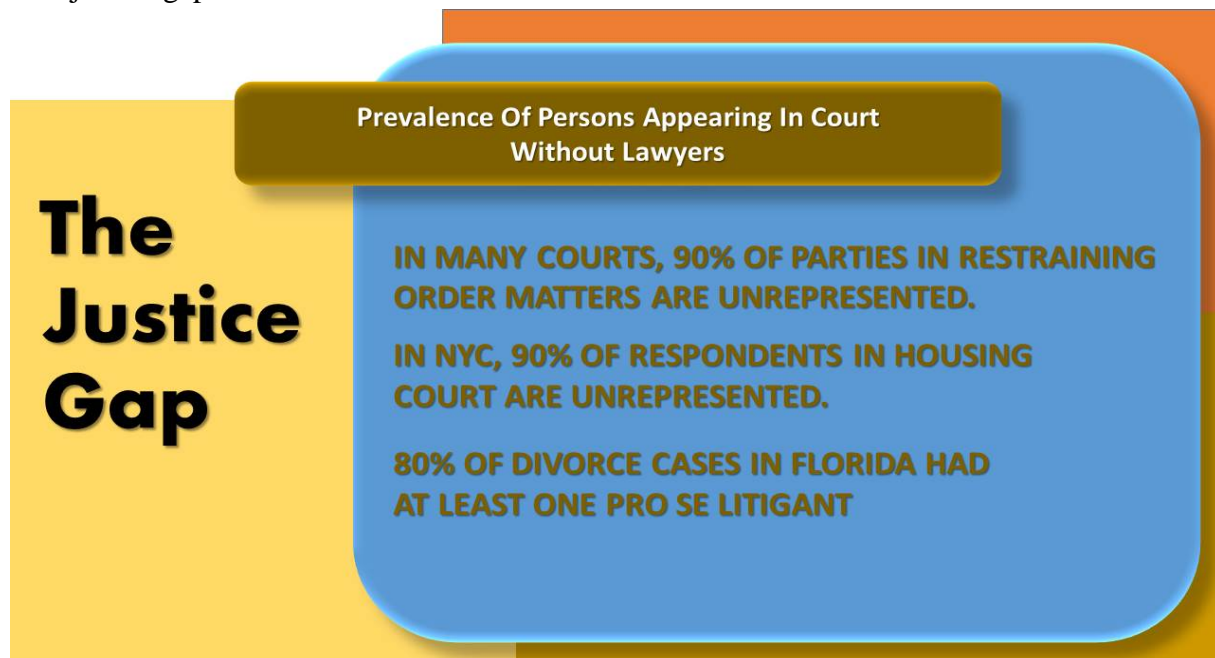
The unmet legal needs of these and other vulnerable and underserved populations involve a broad range of matters including housing, family law matters, and access to services.

A large category of moderate income Floridians are effectively excluded economically from access to justice because they cannot afford to hire a lawyer and they do not qualify for legal aid. Middle class families tend to face cases involving landlord-tenant, traffic, family law, and consumer issues. As with the poor, the inability to obtain legal assistance often threatens their health and safety, undermines their family structure, and puts at risk their housing and employment.

¹For more details please refer to pages 31–34 of the exhibits: Justice Gap Analysis prepared by Greacen and Associates, LLC, August 2015. John Greacen is a nationally-recognized courts/technology consultant who is also serving as technical advisor to the National Center for State Courts committees developing business and technical requirements needed for “umbrella” triage systems. Also see the World Justice Project Rule of Law Index statistic cited in this ABA Journal article concerning the 30 percent of low income Americans who give up and seek no legal redress: http://www.abajournal.com/magazine/article/unequal_justice_u.s._trails_high-income_nations_in_serving_civil_legal_need.

Note: the slides in this report are from the presentation given by the Access to and the Delivery of Legal Services Subcommittee. The entire presentation is available in the Commission’s Knowledge Base database on the web site. Please visit the web site www.flaccessjustice.org and click on the “ATJ Knowledge Base” tab and search under the “ATJ Presentations” category.

Local legal aid societies, despite declining resources, have long been the safety net for many low-income individuals who would otherwise not have access to our civil justice system. The legal services attorneys in Florida work very hard and are a tremendous resource for low income litigants. However, there are neither enough such offices nor enough legal staff. Currently, Florida legal services attorneys can serve, at most, about 20% of the needs of indigent civil litigants. This does not even take into account the many working-class Floridians who earn too much to qualify for legal aid, but not enough to afford to hire an attorney. This is the Florida civil justice gap.



2

²80 percent of divorce cases in Florida include at least one pro se litigant. Jordan Furlong, lawyer, consultant, and legal industry analyst, cited in The Florida Bar News, July 15, 2014: <http://www.floridabar.org/DIVCOM/JN/JNNews01.nsf/RSSFeed/C48FFE62AEEBC2EA85257D0E00424A1E>. Also The National Center for State Courts estimates that one-third of cases in lower-level trial courts in this country are conducted with at least one unrepresented party. That constitutes a 10 percent increase in such matters since the 1970s. The statistics are particularly shocking for domestic relations matters. Judges handling divorce cases in Arizona and Florida estimate that 80 percent of their cases involve at least one self-represented party. Learning to Live with Pro Se Opponents: http://www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/proseopponents.html.

A California study found that 67 percent of petitioners and 80 percent of respondents in family law cases were unrepresented; in unlawful detainer (eviction) cases, over 90 percent of defendants and 34 percent of petitioners at filing were unrepresented. In domestic violence restraining order cases, litigants are reported to be pro se over 90 percent of the time. From Documenting the Justice Gap in America, September 2009, Legal Services Corporation,

While there is tremendous work to be done in order to adequately serve the Floridians caught in the civil justice gap, the Commission is exploring options for innovative and creative ways to further assist the many thousands of vulnerable and underserved Floridians – children, elders, persons with disabilities, veterans, domestic violence victims, human trafficking victims, those with limited English proficiency, and others – who require access to the civil justice system to address their unique needs. The Commission is leveraging the collective wisdom and experience of the many groups it has brought together in order to expand access to civil justice.

C. SUBCOMMITTEE INTERIM REPORT HIGHLIGHTS

Each subcommittee has prepared its own interim report. These subcommittee interim reports are attached in the following order: 1) Access and Delivery, 2) Continuum, 3) Technology, 4) Funding, and 5) Outreach.

I. Access to and the Delivery of Legal Services Subcommittee:

This subcommittee organized itself into three workgroups. Each workgroup was assigned a specific area to research based upon the subcommittee's charge.

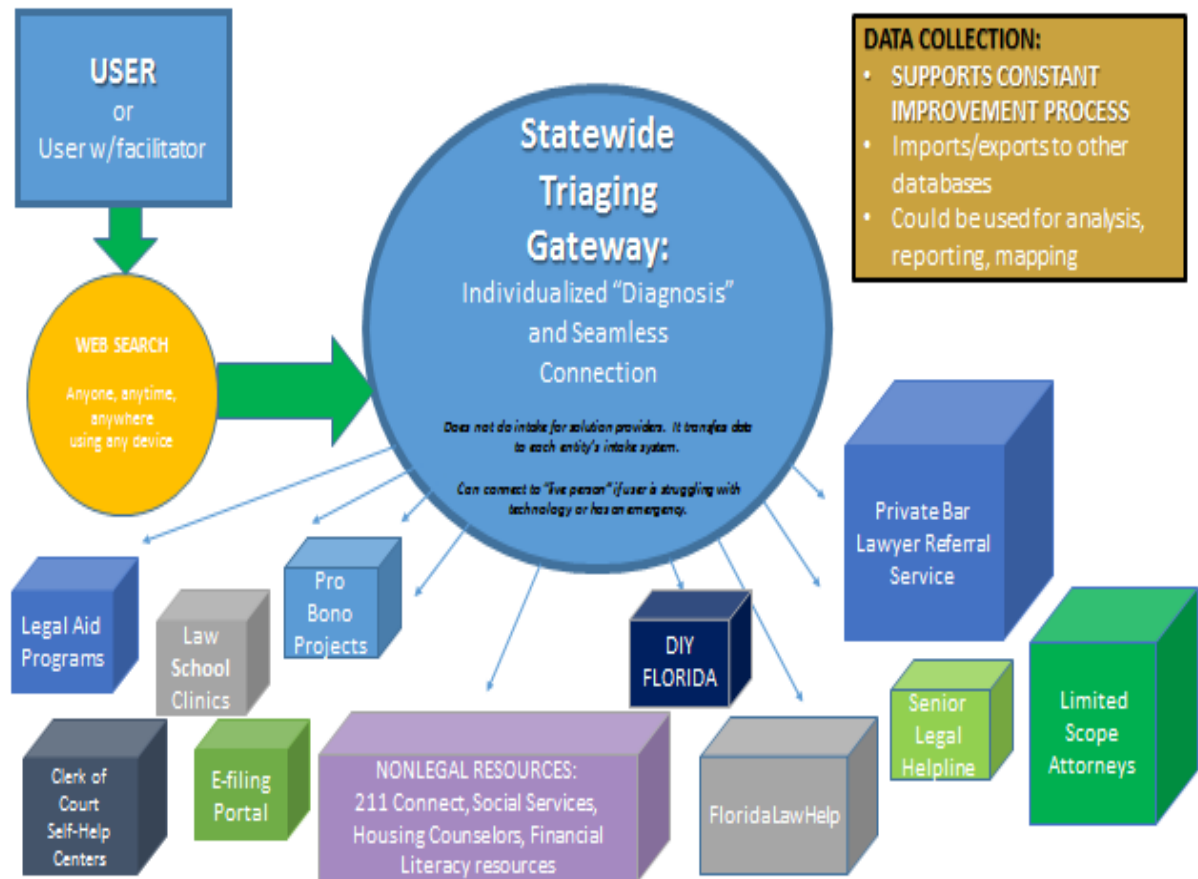
- a) Subgroup 1. To study and recommend models and best practices for intake systems for providing legal services for the poor and middle class.
- b) Subgroup 2. To study and recommend models and best practices for the assignment and coordination of matters identified in the intake process.
- c) Subgroup 3. To study and recommend tools, training, and techniques necessary to provide high quality legal services in a timely and efficient manner.

A. Statewide Gateway Portal: At its second meeting held on May 15, 2015, the Commission voted to support, in concept, the creation of a statewide gateway portal and to direct the subcommittee to develop an implementation plan. The subcommittee reported that substantial progress has been made toward the development of the statewide gateway portal. The gateway portal concept is being designed to provide all individuals with a way of effective and meaningful access to civil justice. For Floridians falling into

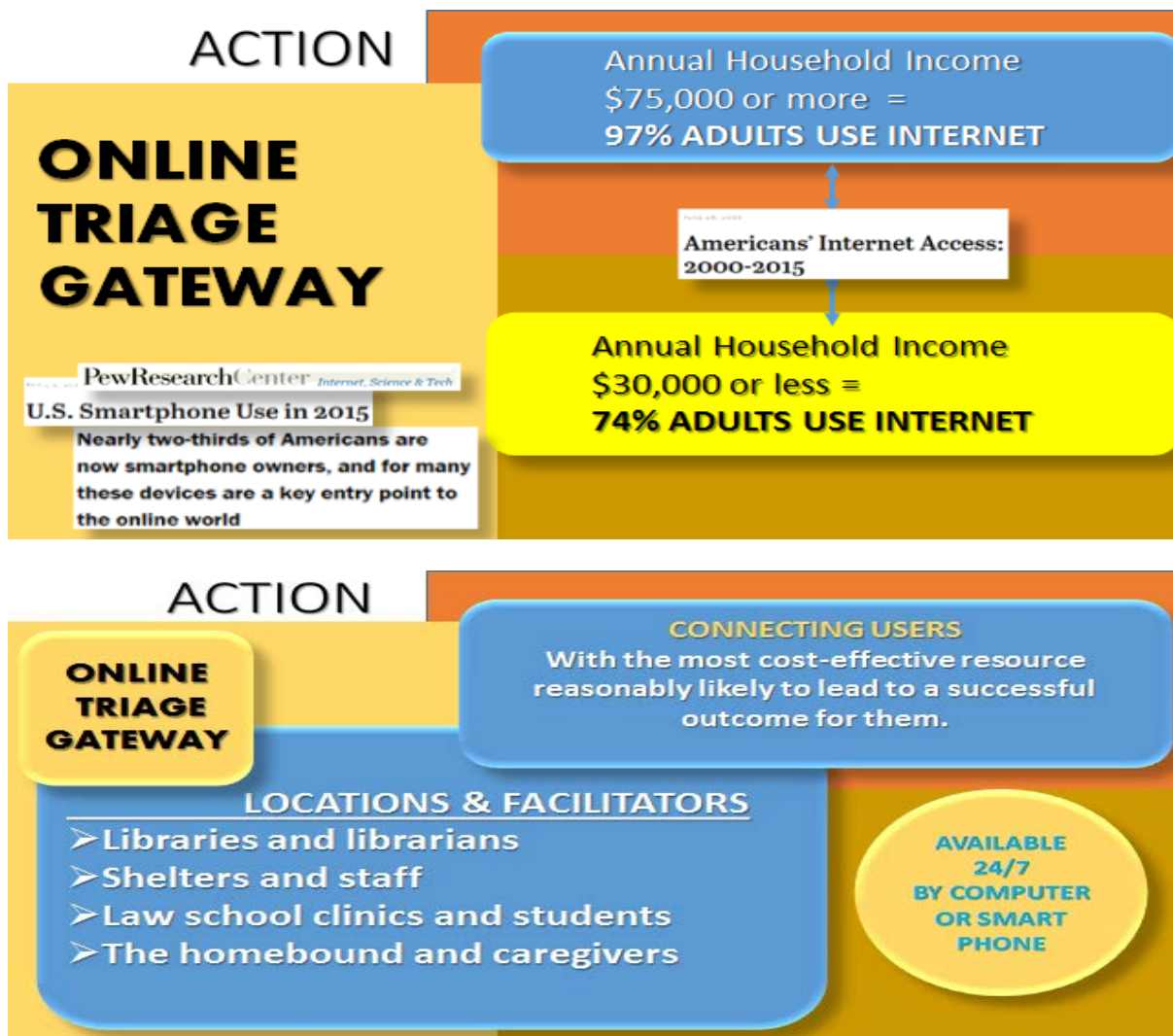
which in turn cites: Self-Represented Pro Se Statistics Memorandum, September 25, 2006, National Center for State Courts: <http://www.ncsconline.org/wc/publications/memos/prosestatmemo.htm#other>

the civil justice gap who do not, or cannot, find the assistance they need, the gateway portal will serve as an online connector to existing information/resources, self-help, advice, and/or representation. This gateway will span a wide range of information and service entities including, but not limited to, legal aid organizations, court self-help centers, Florida’s Elder Law Hotline, law school clinics, law libraries, and lawyer referral service.

This flow chart demonstrates the planned functioning of the gateway.³



³For more details about the statewide gateway portal, please see the “Access to and the Delivery of Legal Service Subcommittee Interim Report” under the exhibits, page 1. For other related slides concerning the “Statewide Triaging Gateway”, please refer to pages 22–25 of the exhibits.



B. Revisions to Rule 12 of The Rules Regulating The Florida Bar: The subcommittee discussed the prospect of changes to The Rules Regulating The Florida Bar to eliminate barriers to pro bono representation, thereby enhancing meaningful access to civil justice. The subcommittee suggests changes to Rule 12 to permit retired judges and retired and active law professors to serve as emeritus attorneys. It also suggests that the scope of work in which emeritus attorneys can engage be expanded to allow them to provide advice and assistance, but only to clients whose issues are not expected to require litigation.

The subcommittee, upon a recommendation from the Commission, asked the Pro Bono Legal Services Committee of The Florida Bar to formulate proposed language to effect these suggestions. The Rules Subcommittee of the Pro Bono Legal Services Committee

of The Florida Bar circulated changes and sought comments from various sectors including The Bar's Senior Lawyers Committee, Florida legal services programs that have worked with emeritus attorneys, and people who have performed work as emeritus attorneys under the current version of the Emeritus Attorney Rule. A final draft of the proposed changes/suggestions was circulated to The Florida Bar's Senior Lawyers Committee, which had no objection to the proposed revisions to Rule 12. Further, the Pro Bono Legal Services Committee of The Florida Bar voted, without objection, to approve the proposed revisions to Rule 12 of The Rules Regulating The Florida Bar and to recommend the proposed Rule in both clean and redlined versions.⁴

ACTION


Why Emeritus Attorney Pro Bono Programs?

Emeritus attorney pro bono programs provide a limited license for retired and non-practicing lawyers who otherwise may retire from the active practice of law to practice on a volunteer basis for non-profit legal services providers serving vulnerable seniors and low- and moderate-income individuals.

The purpose of these programs is to supplement existing legal services providers serving vulnerable seniors and low- and moderate-income individuals. They are a critical component of the aging network or the legal services delivery system for low- and moderate-income individuals.

Emeritus attorney pro bono programs have at least three policy implications for delivery of direct services. The first impact is that the programs offer additional resources and are one method of supplementing existing legal services in light of growing need and finite resources. The second is that emeritus attorneys are well-equipped to provide community legal education programs, which have the potential to help seniors and low- and moderate-income individuals avoid legal crises. The third is that emeritus attorneys may be more readily used to reach out to provide legal services to homebound residents, residents of hospitals, long-term care facilities, and hospices, clients in rural and urban areas with limited transportation, and others who are unable to come to an office or clinic.

The volunteer attorney becomes a broker between a client and a complex social and legal system. Emeritus attorneys become a critical component of the legal needs of individuals in the greatest social and economic need.



EMERITUS RULE

Supplement Existing Legal Services

Well-equipped for Community Education

More readily available for the homebound or hospitalized, clients in rural, urban areas without transportation.

ACTION


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EMERITUS RULE

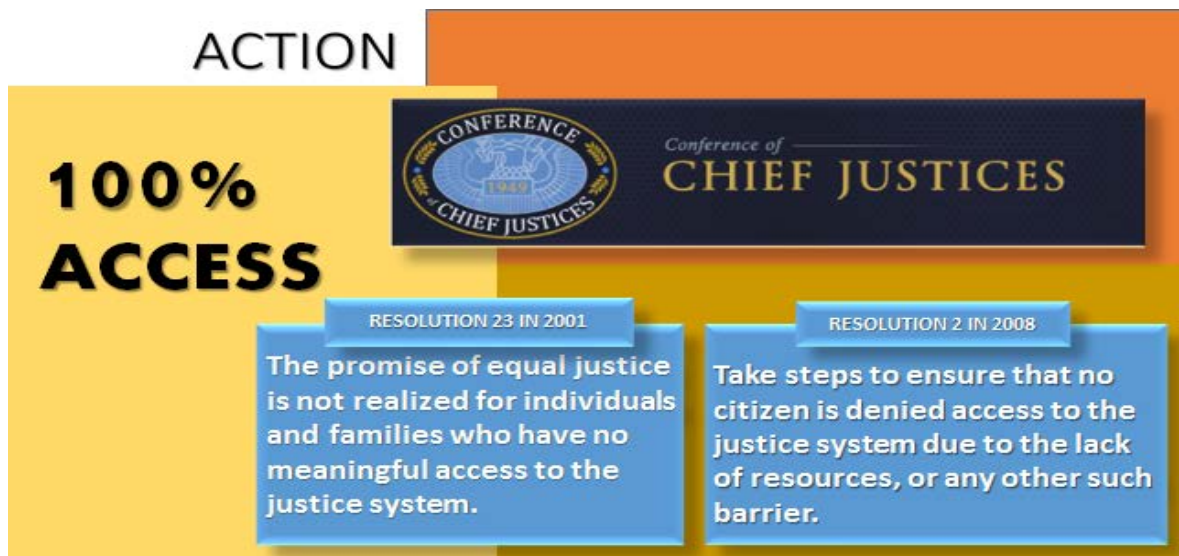
INCREASE THE NUMBER OF PARTICIPANTS IN THE PROGRAM: Permit retired judges, law professors, both retired and active, to serve as emeritus attorneys.

EXPAND THE PERMITTED SCOPE OF WORK OF EMERITUS ATTORNEYS: Allow emeritus attorneys to provide advice and assistance to clients whose legal problems are not subject to litigation.

⁴Please refer to pages 38–50 of the exhibits for the clean and redlined versions of the proposed revisions to Rule 12 of The Rules Regulating The Florida Bar.

C. Resolution of Conference of Chief Justices and Conference of State Court

Administrators: At their 2015 Annual Meeting, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) voted to “support the aspirational goal of 100 percent access to effective assistance for essential legal needs.” Further, the resolution adopted by CCJ and COSCA urged their members to provide leadership in achieving that goal and to work with their Access to Justice Commissions to develop a strategic plan. A copy of Resolution 5: Reaffirming the Commitment to Meaningful Access to Justice for All is attached.⁵

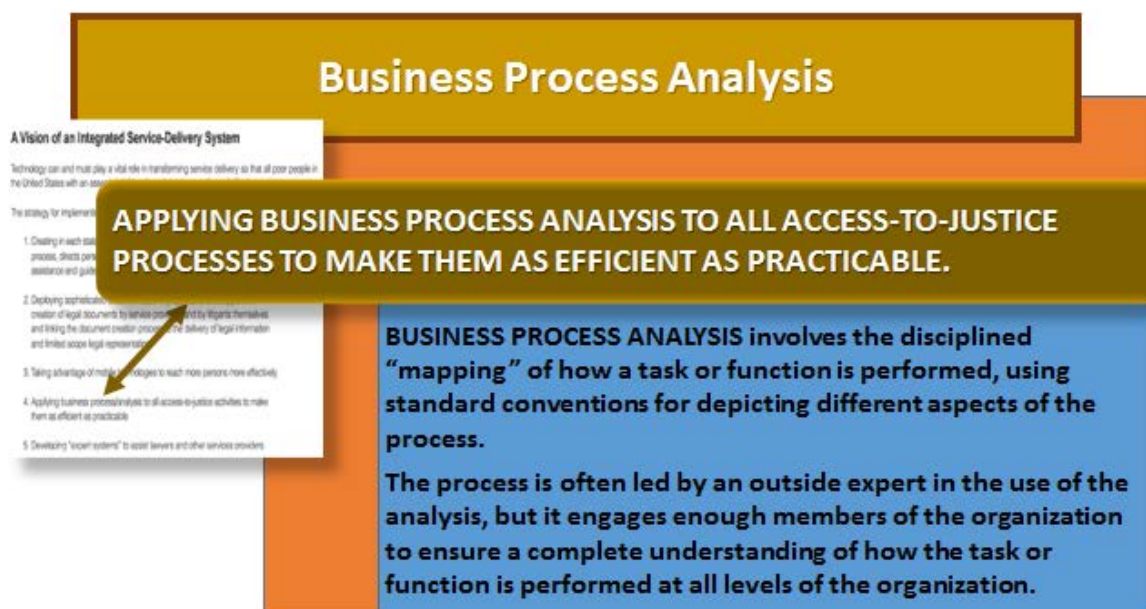


The Commission voted to adopt CCJ/COSCA Resolution 5. However, the Access to and the Delivery of Legal Services Subcommittee suggests that the Commission’s adoption of Resolution 5 is only a first step, as successful action will ultimately require both the development of an access to civil justice strategic plan with realistic and measurable outcomes and a conversation about what 100 percent access means and what effective access requires. This further work would most suitably be undertaken by a permanent Access to Justice Commission in Florida.

D. Business Process Analysis Applied to Legal Services: The subcommittee reviewed the concept of Business Process Analysis (BPA), its application to legal

⁵Please refer to pages 36 and 37 of the exhibits: Resolution 5: Reaffirming the Commitment to Meaningful Access to Justice for All.

services, and the prominent work of Seyfarth Shaw.⁶ The subcommittee contacted the pro bono partner at Seyfarth Shaw, a leader in applying BPA in the legal arena, to learn more about its work helping the Illinois Legal Aid programs create more efficient systems. Using BPA, Seyfarth Shaw helped Illinois redesign its central intake system to be more efficient and assist more clients. Currently the subcommittee is working with The Florida Bar Foundation staff and Florida legal aid staff to further explore BPA and to determine how it may be utilized to increase efficiency in Florida’s legal aid community.

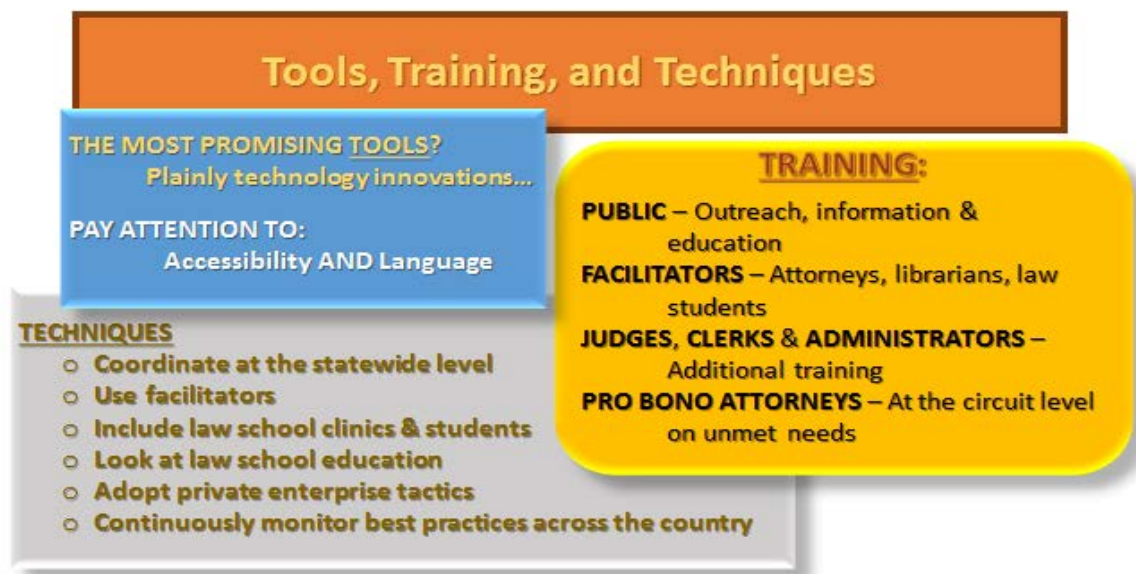


E. Tools, Training, and Techniques: The subcommittee compiled research and notes regarding the tools, training, and techniques that other states and Canada have used in improving access to and delivery of legal services in civil matters. The primary source

⁶Seyfarth Shaw, LLP developed the SeyfarthLEAN program as a way for its firm to engage in the more efficient delivery of legal services, increase quality work by advocates and provide better value for the fees being paid by clients. The program implements business process analysis and process-driven methodologies to meet these goals. SeyfarthLEAN engages in a five-part analysis known as “DMAIC” (<http://www.seyfarth.com/SeyfarthLean>):

- (1) Define: Define what the client values.
- (2) Measure: Measure and collect data that will determine the factors that influence how we design our delivery of legal services to meet the client’s values.
- (3) Analyze: Analyze information and assess how best to create solutions that meet or exceed the client’s value expectations.
- (4) Improve: Implement solutions, evaluate benefits and make improvement to service delivery.
- (5) Control: Monitor performance, communicate and incorporate conclusions.

of leads to these resources was the Access to Justice web sites maintained by the National Center for State Courts and the American Bar Association. The subcommittee evaluated the information gleaned from these resources, the recommendations made by the subcommittee's working groups, and the work done by The Florida Bar Standing Committee on Pro Bono Legal Services. The subcommittee believes that more consultation and study are warranted before issuing any final report and recommendations.



The subcommittee presented, and the full Commission approved, the following motions at the September 18, 2015, Commission meeting:

- a) The Commission recommends the Supreme Court of Florida approve the continued development of the Gateway and approve a pilot project subject to obtaining adequate funding. If funding is obtained, the chief justice as chair of the Commission should be empowered to authorize the commencement of the pilot project without further Commission vote.
- b) The Commission recommends the Supreme Court of Florida approve the Commission's adoption of the Conference of Chief Justices/Conference of State Court Administrators Resolution 5: Reaffirming the Commitment of Meaningful Access to Justice for All.

- c) The Commission recommends the Supreme Court of Florida approve the proposed revisions to Rule 12 of The Rules Regulating The Florida Bar.

II. Continuum of Services Subcommittee:

In studying the charge assigned to it, this subcommittee determined it was necessary to examine the demographics (including income, education, and ethnicity) of those in need of services. The subcommittee observed that the needs of those in poverty are one overriding priority. The subcommittee also concluded that access to justice pertains to all civil law matters.

With these considerations, the subcommittee developed a spectrum along which self-represented persons find themselves in need of services and assistance in navigating the legal system. This spectrum encompasses methods of outreach whereby affected persons are made aware of services that are available; receive an assessment of the individual and the individual's legal needs; receive a determination of the resources available to the individual; and receive an assessment of the needs of self-represented individuals in both the conclusion and post-resolution phases of their legal problem.

The subcommittee developed this spectrum after dividing into three subgroups that reflected the various stages where self-represented persons engage with the legal system. The subgroups were:

- a) Outreach Subgroup: Focused on methods of informing the public regarding resources, recourses, and remedies that are available to self-represented persons. The subgroup examined ways in which available resources are marketed, both locally and at the statewide level.
- b) Assessment/Identification Subgroup: Researched the need for adequate assessment of a person's legal problems. Such an assessment would help determine available resources. The more complete the assessment, the more comprehensive the assistance can be, including services available from non-lawyers. The subgroup oriented its efforts around the premise that many people seeking legal advice (regardless of their incomes) may not know the nature or extent of the legal issues they face.

- c) Resources Subgroup: Researched and compiled a list of current resources available in Florida and nationally. The subgroup also looked at resources that could be developed in the future. It noted that additional work is necessary to determine whether resources are truly available to specific underserved populations in Florida, including those who lack English proficiency, elders, and those living in rural areas.

The Resources subgroup made a special note that some cases involve potential or actual danger to a litigant (such as cases of domestic violence, stalking, and sexual assault) and some resources may not provide the necessary protection of the litigant and affected children. Therefore, in these high-risk cases, some services that do not provide adequate protections should not be recommended.

The subcommittee had discussions regarding the recurring issue of the unlicensed practice of law. Unlicensed practice of law seems to be a prevalent issue when considering access to civil justice. The subcommittee noted the need for increased training of non-lawyers, especially clerks of court staff, with respect to the parameters of unlicensed practice. It also discussed at length the possibility of creating a “civil legal assistant” classification. This type of non-lawyer classification has been created in some states by legislation and in others by court order. Persons in the non-lawyer “civil legal assistant” classification, if permitted, would provide assistance with the preparation and filing of forms.

The subcommittee also discussed the creation of a database of resources that could potentially be maintained in a wiki-style manner, allowing for open editing as needed. Such a database might be maintained by The Florida Justice Technology Center.

The subcommittee presented, and the full Commission approved, the following motions at the September 18, 2015, meeting:

- a) That the Commission recommend to the Supreme Court of Florida:
 - i. Authorization for the Commission to create a Florida Civil Legal Resources Access Site, beginning with the work already done by the Continuum of Services Subcommittee;
 - ii. Task the Florida Justice Technology Center with the maintenance and updating of the Resources web site.

- b)** That the Commission specifically explore the following five key strategies for creating greater access to civil justice:
 - i.** Developing and outlining specific strategies to increase the number of lawyers to assist the public (examples: emeritus rules, reexamination and expansion of the current rules regarding unlicensed practice of law).
 - ii.** Helping clerks of court to have clarity and, if necessary, broader authority to assist people who seek information about accessing relief in the civil courts.
 - iii.** Creating a navigator system where trained experts could work with the public to help direct them to resources, either through the Gateway system or outside of it.
 - iv.** Creating a designated class of “Civil Legal Assistants” such as those in California, Illinois, and New York.
 - v.** Funding legal services programs statewide to establish more lawyer positions to both provide needed legal services and provide necessary oversight of “Civil Legal Assistants.”

III. Technology Subcommittee:

The Technology Subcommittee is charged with examining ways to leverage technology in expanding access to civil justice for disadvantaged, low income, and moderate income Floridians. The subcommittee had general discussions of technology as it relates to courts and legal professionals and as it relates to the public and self-represented litigants.

The subcommittee reviewed and discussed the A2J Author software and forms, the Judicial Management Council access workgroup, and its DIY (Do It Yourself) Florida forms project. At the request of Subcommittee Chair Judge Robert Hilliard, Chuck Hays of The Florida Bar Foundation prepared a detailed Resource Guide for the Technology Subcommittee to use during the course of subcommittee work. The guide includes information and links on integrated service delivery considerations; technology platforms utilized to expand access; and examples of access initiatives utilizing technology to expand access for clients, pro bono clients, pro bono attorneys, court document assembly, and e-

Filing. The seven-page guide is embedded with hyperlinks to technology-related access resources, information, and examples.⁷

The subcommittee also discussed and reviewed the business plan for the Florida Justice Technology Center.⁸ The Florida Justice Technology Center will identify, develop, and use innovative and effective technology solutions to provide accessible and easy-to-use systems that address the legal needs of the end user. These solutions will integrate with and complement existing systems like those of the courts, the private bar, the pro bono community, and legal services programs.

The Technology Subcommittee continues to explore technology projects and initiatives that have potential for adoption in Florida, some of which include expanding access and responding to the unmet legal needs of low and moderate income and disadvantaged Floridians. The next steps for the subcommittee will be to identify a list of potential in-person and online resources, study those resources, and select resources with the furthest reach across the population, as well as those with the highest probability of success in serving the unmet needs. This study will be multifaceted and multipronged and will include identifying potential solutions such as:

- a) Supporting projects that utilize technology in expanding access to civil legal services for low and middle income Floridians, including self-represented litigants; for example, the proposed statewide gateway portal.

⁷Please refer to pages 80–86 of the exhibits: Resources Guide for the Technology Subcommittee.

⁸The Florida Justice Technology Center, a new statewide nonprofit corporation dedicated to increasing access to justice through the innovative use of technology, launched July 1, 2015. It is modeled on the only other statewide nonprofit access to justice technology entity in the country, Illinois Legal Aid Online. The Florida Justice Technology Center will work not only with legal aid and pro bono programs but also with the judiciary and the court system, clerks of court, lawyers, law schools, corporations, community partners, and others to develop technology products and services that will expand access to justice. It will coordinate and promote the use of technology by identifying efforts from around the state and around the country that could be implemented on a statewide basis in Florida—then take a leadership, coordinating, and/or collaborative role in implementation of those efforts. <http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/a98ab5862fa7ff3e85257e88004986d4!OpenDocument>.

- b) Working with the newly created Florida Justice Technology Center on a statewide initiative for the intake and referral of legal matters involving low and moderate income Floridians.
- c) Expanding already developed self-help and do-it-yourself forms projects to provide additional resources and increased access to Floridians.

Tangentially, the subcommittee will also look at potential obstacles or barriers to implementing the potential solutions such as:

- a) Costs associated with technology expansion, including but not limited to: equipment, software subscriptions and licenses, staffing, space limitations, etc.
- b) Initial and ongoing training.
- c) Awareness and promotion.
- d) Differing technologies available and in use by potential providers of legal services and the potential customers of legal services.

Thus far, it appears that funding is the primary obstacle and potential barrier for the Commission and the legal profession to respond to unmet needs and potentially expand access via technology and its necessary infrastructure. The Technology Subcommittee will work to identify technology solutions and will seek any resources available from The Florida Bar and the Office of the State Courts Administrator, as well as The Florida Bar Foundation and its consultants, to identify recommendations for consideration by the full Commission.

IV. Funding Subcommittee:

The Funding Subcommittee's charge was to examine how available resources might be maximized and identify how additional resources might be secured in order to provide stable funding in support of services that enhance access to civil justice for disadvantaged, low income, and moderate income Floridians. The subcommittee focused on three key areas:

- a) *Cy Pres* Rules/Statutes: Class action litigation may result in a defendant providing settlement funds for distribution among members of the class. After the distribution, there may be a residue of undistributed funds. Under the *cy pres*

doctrine, a court may issue an order providing for residual funds to be distributed to charities or not-for-profit organizations. These awards are commonly referred to as *cy pres* awards. Eighteen states have court rules or statutes providing for legal aid organizations to receive class action residuals. The ABA Center for Access to Justice Initiatives has supplied a synopsis of provisions in the 18 states' rules or statutes.⁹

The subcommittee reviewed the March 2014 Virginia Journal of Social Policy and the law article entitled "Class Action Settlement Residue and *Cy Pres* Awards: Emerging Problems and Practical Solutions."¹⁰ Consumer class action attorney John A. Yanchunis¹¹ developed a memorandum on *cy pres* awards for the subcommittee. Subcommittee members discussed the potential beneficiary or beneficiaries of such a rule, noting that several of the Foundation's 30 general support grantees have existing relationships through which they receive funding from *cy pres* awards. Mr. Yanchunis drafted a potential *cy pres* rule, Residual Funds to Named Organization, providing beneficiary options for further consideration.¹²

- b) **Legislative Funding:** Subcommittee members discussed the process by which legislative appropriations and statutory changes are requested, pursued, and made. The subcommittee also received background information on statutorily prescribed revenues generated from court-related activities in Florida and the use of such

⁹Please refer to pages 96–104 of the exhibits: ABA Resource Center for Access to Justice Initiatives; Legislation and Court Rules Providing for Legal Aid to Receive Class Action Residuals.

¹⁰The March 2014 Virginia Journal of Social Policy and the Law article, Class Action Settlement Residue and *Cy Pres* Awards: Emerging Problems and Practical Solutions.
http://www.vjspl.org/wp-content/uploads/2014/03/3.25.14-Cy-Pres-Awards_STE_PP.pdf.

¹¹Attorney John A. Yanchunis has more than 30 years of experience as a trial lawyer. He is an attorney with the nationwide firm Morgan & Morgan and is located in the firm's Tampa office. He received his law degree from the South Texas College of Law. He is a member of The Florida Board of Bar Examiners, the Florida Supreme Court's Judicial Management Council, and the Florida Bar's Consumer Protection Law Committee. He is admitted to practice within the states of Florida and Texas; the Fifth, Sixth, Seventh, Ninth, and Eleventh U.S. Circuit Courts of Appeals; and the U.S. Supreme Court. He is also admitted to practice before numerous U.S. District Courts throughout the country. <http://profiles.superlawyers.com/florida/tampa/lawyer/john-a-yanchunis/40fb9287-04ca-474c-a174-e0eddfc5c29b.html>.

¹²Please refer to page 105 of the exhibits: Residual Funds to Named Organization.

revenue for state- and county-funded activities. The subcommittee reviewed materials from the ABA Center for Access to Justice Initiatives that describe the historic and current state-by-state comparative data on legislative funding for legal aid. At this time, the subcommittee does not have any recommendations related to legislative funding.

- c) **Developing Support in the Legal and Business Community:** The direct and indirect cost to companies when employees' civil legal needs are left unmet was researched and survey questions were developed that would allow employers to survey the incidence of legal issues in employees' lives and the impact on their morale and productivity at work. In addition, subcommittee members discussed issues such as: how fundraising in support of access to civil justice is affected by public perceptions; the efforts by the ABA and others at the national level to educate the business community on access issues; the need to create urgency among business leaders around what happens when employees' legal needs are not met; and the need for a forum in which to present objective data. Subcommittee members were also provided a July 15, 2015, publication, "Supporting Survivors: the Economic Benefits of Providing Civil Legal Assistance to Survivors of Domestic Violence."

The Subcommittee presented, and the full Commission approved, the following motion at the September 18, 2015, meeting:

The Commission recommends the Supreme Court of Florida approve Commission consideration of a *cy pres* rule in Florida.

V. Outreach Subcommittee:

The Commission asked the Outreach Subcommittee to determine strategies to educate the following on access to justice issues and the need for a strong civil legal assistance system:

- The general public;
- The judicial, legislative, and executive branches of government;
- Bar members and law students;

- Civil legal service providers and the pro bono community;
- The business community;
- Funders;
- The media; and
- Other stakeholders.

The Commission further directed the subcommittee to:

- Ensure consistent communications messaging from the Commission and all of the subcommittees regarding study, progress, reports and recommendations, and deliverables; and
- Identify possible outreach partner organizations for distribution of educational materials and discussion forums.

Since the establishment of the Commission, members of the Outreach Subcommittee have been speaking to the public about the purpose and goals of the Commission. For example, Chief Justice Jorge Labarga and representatives of The Florida Bar continue to speak with lawyer and other stakeholder groups about the Commission, as well as with newspaper editorial boards and others around the state.

The subcommittee also created and continues to work on a variety of branding and communications items for the Commission. The Outreach Subcommittee created a number of ways for interested parties and members of the public to access information about the Commission's work, including a website¹³ with a Commission logo to increase recognition, and a presence on social media platforms like Facebook and Twitter. In addition, full Commission meetings are recorded and made available on the Internet by the Florida Channel.¹⁴

The subcommittee has also created the following communications tools relating to the Commission's mission:

- Frequently Asked Questions;
- An "elevator speech";

¹³See www.flacesstojustice.org.

¹⁴Available at <http://wfsu.org/gavel2gavel> via the "Archive Search" function.

- Key messages;
- A slide show presentation;
- A communications plan; and
- A Q&A on the statewide gateway portal being developed by the Access to and Delivery of Legal Services Subcommittee.¹⁵

Ongoing work of the Outreach Subcommittee includes collection of stories of Floridians confronting civil legal matters. These stories help demonstrate the dramatic impact of the legal services gap and illustrate the benefits of improving access to civil justice.

In addition, the subcommittee is currently evaluating potential names for the statewide gateway portal. The subcommittee plans to have a simple and memorable name or acronym that will become well known and easy to find for Floridians needing assistance.

Next steps in the Outreach Subcommittee’s work will include publicizing the interim report after it is approved and issued by the full Commission. The communications channels and tools to be used include: news releases, press conferences, editorial board meetings, op/eds, social media posts, and speaking engagements/presentations.

Furthermore, the subcommittee will continue to develop outreach/educational materials as needed to communicate the work of all subcommittees and the Commission.

D. OTHER ACHIEVEMENTS

In addition to the subcommittee work described above, the Commission created the Florida Access to Justice Knowledge Base, a one-of-a-kind searchable database that contains reports, white papers, articles, and presentations from across the state, across the nation, and around the world. The legal community and the general public have access to this extensively researched resource through the Commission’s website (www.flaccessjustice.org). The Knowledge Base is updated as additional access to justice information becomes available.

¹⁵More details about the statewide gateway portal are available under the “Access to and Delivery of Legal Services Subcommittee” section of this report, beginning on page 7.

E. RECOMMENDATIONS TO THE SUPREME COURT OF FLORIDA

Based on significant research, analysis, and discussion of a number of issues related to providing meaningful access to civil justice for all Floridians, the Commission submits the following recommendations for consideration by the Supreme Court of Florida:

- 1. The Commission recommends support of the continued development of the Statewide Gateway Portal and approval of a pilot project, subject to obtaining adequate funding.**
- 2. The Commission recommends the Supreme Court of Florida approve the Commission's adoption of the Conference of Chief Justices/Conference of State Court Administrators Resolution 5: Reaffirming the Commitment to Meaningful Access to Justice for All.**
- 3. The Commission recommends the Supreme Court of Florida approve the proposed revisions to Rule 12 of The Rules Regulating The Florida Bar.**
- 4. The Commission recommends the Supreme Court of Florida:**
 - i. Authorize the Commission to create a Florida Civil Legal Resources Access Website, beginning with the work already done by the Continuum of Services Subcommittee; and**
 - ii. Task the Florida Justice Technology Center with the maintenance and updating of the Resources Website.**
- 5. The Commission recommends the Supreme Court of Florida authorize the Commission to develop a specific proposal for a *cy pres* rule in Florida.**



FLORIDA COMMISSION
ON ACCESS TO CIVIL JUSTICE

INTERIM REPORT EXHIBITS



FLORIDA COMMISSION ON ACCESS TO CIVIL JUSTICE

SUBCOMMITTEE INTERIM REPORT TO THE COMMISSION

Subcommittee:	Access to and Delivery of Legal Services Subcommittee
Date:	September 8, 2015, Revised October 7, 2015
Prepared By:	William A. Van Nortwick, Jr., Chair

As reported at the May 15, 2015, meeting of the Florida Commission on Access to Civil Justice (ATJ Commission), the Access Subcommittee broke out into three workgroups. Each workgroup studied and made recommendations concerning specific actions for consideration by the ATJ Commission. At its meeting on August 13, 2015, the Access Subcommittee adopted various recommendations of its work groups.

1. Updated Data on Justice Gap. As the first meeting of the ATJ Commission, the commissioners received substantial information on the extent to which the legal system is meeting the legal needs of Americans and Floridians. Attached as **Exhibit 1** to this report is an updated Justice Gap Analysis prepared by Greacen LLC, a consultant to the Florida Bar Foundation (Greacen Analysis) as well as additional statistics from the sources cited. The Greacen analysis is consistent with the previous data given to the ATJ Commission. Based on the approaches discussed in detail in the Greacen Analysis, it is estimated that from 14% to 29% of Americans with civil legal problems, including 25% of defendants in non-family civil cases, engage the services of a lawyer to assist them.

2. Triage Gateway. At its meeting on May 15, 2015, the ATJ Commission voted to support, in concept, the creation of a statewide gateway portal and to direct the Access Subcommittee to develop a plan to

accomplish this concept. The Access Subcommittee is pleased to report that substantial progress has been made in the development of a plan for implementation of the statewide triage gateway (the Gateway).

The Access Subcommittee worked closely with Melissa Moss of the Florida Bar Foundation, Joyce Raby, Interim Executive Director of the Florida Justice Technology Center, consultant John Greacen¹, and Ed Marks² of New Mexico Legal Aid (NMLA). Using Legal Services Corporation technology grant funding, NMLA has developed a statewide triaging portal for six New Mexico legal aid entities that currently is in the final testing stage. LSC tech funds require that recipients share information for replication purposes. NMLA's successful 2013 LSC TIG grant application for their triage system notes that the use of Neota Logic allows for rules development and maintenance to be done by non-technical staff which will *"mitigate the need for extensive downtime or potentially costly interventions by a specialized developer. The proposed project will also differ significantly from previous efforts in that it will model a "next generation" triage platform, using the Neota Logic expert system"*.³

The NMLA triaging portal and the Florida Gateway are major components in a "100% Access" approach to the delivery of legal services—providing 100% of individuals with civil legal needs to some form of effective assistance. For Floridians falling into the justice gap, who do not or cannot find their way to the assistance they need, it will serve as an online gateway or connector to existing information, self-help, advice and/or representation.

¹ John Greacen is a nationally-recognized courts/technology consultant who is also serving as technical advisor to the National Center for State Court committees developing business and technical requirements needed for "umbrella" triage systems of the kind envisioned in this Report. The NCSC committee-promulgated requirements should be available in the next 1-3 months.

² Ed Marks is Executive Director of New Mexico Legal Aid (NMLA), a federally-funded statewide legal services program. In 2013, NMLA received \$2017,000 in Legal Services Corporation Technology Initiative Grant (TIG) to begin development of a triage system that would identify and recommend the best source of assistance for users based on variables such as location, income, language, and other factors. In addition to NMLA, the system encompasses Law Access New Mexico (statewide intake program), Pegasus Legal Services for Children, Lawyer Referral for the Elderly Program, Senior Citizens Law Office and the Southwest Women's Law Center

³ "The rules driving the interview will be editable by non-technical admins, which will reduce maintenance costs and obviate the need to take down the interview while a developer makes modifications. In addition, the interview will be widgetized so it can be easily integrated with partner websites such as libraries, community organizations or other places people turn to for help. Moreover, the project will also establish a new technology framework at Pro Bono Net, "LawHelp Triage," that will serve and deploy the Neota Logic platform. This framework will host and support Neota Logic powered triage interviews for other states in the future—potentially providing a nationally-extensible triage platform". NMLA 2013 LSC Technology Initiative Grant (TIG) Application Narrative (Note: The ProBonoNet platform is used to support half of the country's statewide public, pro bono and advocate websites, including Florida's)

While the NMLA triaging portal will initially serve as a gateway only to the state's legal services organizations, Florida's gateway will be an "umbrella" triage system spanning a wide range of information and service entities, including legal aid organizations, court self-help centers, Florida's Elder Law Hotline, law school clinics and lawyer referral services, using the same or similar algorithms.

The online triage gateway would be accessible 24/7 via computer or smartphone and available at law and public libraries where use could be facilitated by librarians. Users in domestic violence or homeless shelters, VA hospitals or assisted living could be assisted by staff facilitators. Law school students could assist those accessing at clinics or in other settings. It could also be accessible to the homebound or the institutionalized--anywhere caregivers, home healthcare workers, social workers and others could carry and use a tablet or smartphone.

Sophisticated triage systems bridge the justice gap by using very powerful "expert systems" as well as other case and knowledge management technologies. New Mexico utilizes the Neota Logic expert systems platform.⁴

The system takes in information about users, their locations, and their presenting legal issues (informed by data on the steps used to assist previous persons in the same situation and the results in their cases) to create and refine referral algorithms that will direct users to the most available and cost-effective resource reasonably likely to lead to a successful outcome for them. The portal Gateway also will identify users who require immediate/emergency assistance, are struggling with the technology or are in a dangerous situation, and use remote access tools such as LiveChat to connect them immediately with live assistance.

Every service provider connected to the gateway would be able set its own intake parameters and be able to adjust those online on a real time basis to reflect caseloads, vacations, sick leave, and resignations.

⁴ Neota Logic is the creator of Neota Logic Server, a no-code platform with which people who are not programmers build, test, maintain, and deploy expert applications to reduce risk, increase efficiency, and ensure compliance. Neota Logic applications automate expertise by combining rules and complex reasoning, documents, and processes. The following is a link to the Neota Logic Expert System: <http://fast.wistia.net/embed/iframe/t3ye0imixx?popover=true>

Based on continuous and ongoing analysis of case, client and community data, the system will be able to identify those users with the highest likelihood of being able to represent themselves successfully--and will direct them to self-help information and forms (together with information about the availability of full and limited scope legal representation from the private bar)--rather than to legal aid intake. The legal aid, pro bono, and lawyer referral resources will be reserved for “pre-qualified” users require the services of a lawyer.

Attached as **Exhibit 2** is a graphic flow chart demonstrating the functioning of the Gateway. The Gateway will not provide intake for the service organization; however it can export data to the service provider in a pre-approved format to speed up the provider’s intake/data collection process, reduce the possibility of human error and make the transition seamless to the user.

Florida’s legal aid providers do not currently have a centralized online intake system but likely will have in the not too distant future. All but one of the Florida Bar Foundation 29 freestanding legal aid program grantees use the same web-based case management system which will support both centralization of online and telephone intake as well as online pro bono referrals. In 2014, Legal Services of Greater Miami received LSC TIG funding to begin initial development of a statewide online intake system, including the addition of Bay Area Legal Services and Three Rivers Legal Services as the phase two pilot in 2015-2016.

The Access Subcommittee recommends that the ATJ Commission approve the continued development of the Gateway and approve a pilot project subject to obtaining adequate funding. If funding is obtained, the Chief Justice or Acting Chair of the Commission should be empowered to authorize the commencement of the pilot project without further Commission vote.

With the assistance of technical advisor John Greacen, The Subcommittee has identified the following baseline criteria as critical to success of a pilot.

- Of highest priority is membership of the pilot county (or counties) steering committee—at minimum the judge, court administrator, clerk of court, the LSC-funded and non-LSC funded legal aid directors—who must all be committed to the success of the pilot and willing to working

together collaboratively.

- The pilot county or counties must be small and manageable enough in population size as to allow steering committee members to more readily identify target populations, the most pressing legal issues and potential legal and non-legal resources.
- The pilot county or counties should have a significant poverty and/or lower income population and include one or more identifiably vulnerable populations such as veterans or the elderly.⁵

3. Resolution of Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA). At the 2015 Annual Meeting of CCJ and COSCA, CCJ and COSCA voted to "support the aspirational goal of 100 percent access to effective assistance for essential legal needs." Further, the resolution urged the members of CCJ and COSCA to provide leadership in achieving that goal and to work with their Access to Justice Commissions to develop a strategic plan. A copy of Resolution 5: Reaffirming the Commitment to Meaningful Access to Justice for All is attached as **Exhibit 3**.

The Subcommittee recommends that the ATJ Commission adopt CCJ/COSCA Resolution 5.

In his Sept 3, 2015 accesstojustice.net blog post, Towards a Definition of "One Hundred Percent Access to Civil Justice"⁶ Richard Zorza notes that, "With the Resolution also calling for each state to develop access to civil justice strategic plans with "realistic and measurable outcomes," *agreement on what 100% would mean, as well as what "access" would require, are a key part of the process.* In his blog, Zorza suggests we "not engage in "goal creep," and try not to load up the definition with everything." And offers a "starting tentative suggestion" for a definition of 100% access:

A state is providing 100% access to justice in its courts and dispute resolution institutions when available justice services are such that any individual who either might gain by seeking the assistance of an institution to protect their significant interests, or who might gain from assistance in preventing another to use the institution to impinge

⁵ Using county-by-county analysis available in the Fall 2014 United Way of Florida Asset Limited, Income Constrained, Employed (ALICE) Study of Financial Hardship and similar reports http://www.uwof.org/sites/uwof.org/files/14UW%20ALICE%20Report_FL_Lowres_3.23.15.pdf

⁶ <http://accesstojustice.net/2015/09/03/towards-a-definition-of-one-hundred-percent-access-to-civil-justice/>

on their interests, is sufficiently informed about such services to be able decide whether they wish to seek such services, to be able to take the steps required to obtain them if they choose, and can in fact obtain such services if sought. Such services must be available without excessive burden, regardless of the individual's financial resources or other barriers such as language or capacity. Such available and accessible services must be sufficient to ensure that the facts and the law are sufficiently placed before the decision-maker so that a neutral decision-maker can make the decision on the facts and the law, unless an individual decides, upon appropriate information, that they do not want to pursue their case.

He then makes these additional points:

- This does not require that everyone actually seek and get those services, only that they are “sufficiently informed” about them, and that they can get them if they decide to seek them.
- While a decision on the facts and the law is critical in many cases, this definition allows a party to opt out of the process where appropriate. (Often, for example, default is the optimum legal strategy.)
- It does not require that services be free, only that they not impose an excessive burden, and that they are not barred by resources or other barriers.

In a Sept. 6 blog post, Reflections on Two Comments on the Access to Justice Definition,⁷ Zorza agrees with one commentator that “*100% access to justice ultimately means changing court processes so that they reflect the realities of access to information and of litigant capacity and determination, include significant simplification....* The problem is how to come up with a definition that does not go from mission creep to mission explosion, thus undercutting the likelihood of broad incremental strategic change that is needed. Maybe it might meet all goals if the following were added after the first sentence:”

Such a true 100% access state will be more easily and cost-effectively achieved and more genuine if the underlying decision-making processes are designed to minimize the complexity of the underlying proceedings, so that choices about whether to participate are based to the greatest extent possible on the person's view of the merits, and

⁷ <http://accesstojustice.net/2015/09/06/reflections-on-two-comments-on-100-access-to-justice-definition>

their desire to resolve the matter, rather than on any deterrent effect caused by the complexity or burdens that might be reduced or transferred, even at the initial stage.

The Access to and Delivery of Legal Services Subcommittee would suggest that the adoption of CCJ/COSCA Resolution 5 by the Florida Commission on Access to Civil Justice is only a first step, which would ultimately require both the development of an access to civil justice strategic plan with “realistic and measurable outcomes” and a larger conversation on what “100%” means, as well as what “access” would require--most suitably to be undertaken by a permanent Access to Justice Commission in Florida.

4. Proposed Revisions to Rule 12 of The Rules Regulating The Florida. During Workgroup 2’s presentation at the Access Subcommittee Meeting on May 12, 2015 in Orlando, we discussed the prospect of changes to The Rules Regulating The Florida Bar to eliminate barriers to pro bono representation and, thereby, enhancing access to justice. One of our suggestions was that Rule 12 of the Rules Regulating The Florida Bar, the Emeritus Attorneys Pro Bono Participation Program Rule (the “Emeritus Attorney Rule”), be amended to potentially increase the number of participants in the program and expand the permitted scope of work of emeritus attorneys. Specifically, we suggested changes to Rule 12 to permit retired judges, law professors, both retired and active, to serve as emeritus attorneys. In addition, we suggest that the scope of work in which emeritus attorneys can engage be expanded to allow emeritus attorneys to provide advice and assistance to clients whose legal problems are not subject to litigation.

At its May 15, 2015 meeting, the Florida Commission on Access to Civil Justice (the “Commission”) adopted this recommendation and charged the Pro Bono Legal Services Committee of The Florida Bar with formulating proposed language to effect this recommendation. The Rules Subcommittee of the Pro Bono Legal Services Committee circulated draft changes and sought comments from various sectors, including The Florida Bar’s Senior Lawyers Committee, Florida’s legal services programs who have worked with emeritus attorneys and people who have performed work as emeritus attorneys under the current version of the Emeritus Attorney Rule.

The comments received were reviewed and considered by both the Rules Committee and the Pro Bono Legal Services Committee. In addition, the

final draft of the proposed changes was circulated to The Florida Bar's Senior Lawyers Committee who had no objection to the proposed revisions to Rule 12. Further, the Pro Bono Legal Services Committee of The Florida Bar voted unanimously to approve the proposed revisions to Rule 12 of The Rules Regulating The Florida Bar and to recommend the proposed revisions to the Commission for its consideration. Drafts of the proposed Rule in both clean and redlined version are attached as **Exhibit 4**.

5. Proposed Revisions to the Florida Rules of Judicial Administration to Encourage Limited Scope Representation. In 2002, the ABA Model Rule of Professional Conduct 1.2(c) ("Model Rule 1.2(c)") was revised to allow for the unbundling of legal services. By way of brief background, unbundled legal services, also known as "limited scope representation" or "limited appearance representation," is a concept under which an attorney and his or her client agree that the attorney will provide some but not all services necessary to resolve the client's legal problem. For instance, instead of representing a client in a "full bundle" of legal services, the client and attorney can agree that the attorney will merely research the relevant legal authority and prepare a memorandum for the client. Alternatively, both parties can agree that the attorney will handle only certain portions of a litigation matter such as a specific hearing or deposition after which the client will proceed pro se. Regardless of the services provided, unbundling gives litigants an alternative to either paying a substantial fee for full-service representation or handling the matter entirely on their own. The expansion of limited scope representation may serve to make legal services more affordable for members of middle class who may be unable to afford full-service representation but could benefit from the assistance of counsel in discrete portions of legal matters and could afford to pay an attorney for those discrete tasks.

Model Rule 1.2(c) has been adopted verbatim or with some modification by some 46 states and the District of Columbia. In November 2003, the Supreme Court of Florida adopted changes to Rules 4-1.2, 4-4.2 and 4-4.3 of the Rules Regulating The Florida Bar as well as Rule 2.060 of the Florida Rules of Judicial Administration which allow lawyers to provide limited legal services to their clients in family law cases and certain probate matters.

The Access to Legal Services Committee of The Florida Bar's Vision 2016 Commission (the "Vision Access Committee") was charged with making recommendations to facilitate the practice of limited scope representation or

unbundled legal services in all types of civil cases in Florida. The Vision Access Committee drafted proposed changes to the Florida Rules of Civil Procedure and Florida Rules of Judicial Administration to allow attorneys to undertake portions of cases in civil litigation. These proposed rule changes were approved in concept by the Board of Governors of The Florida Bar in March 2015, were modified by and formally approved by The Florida Bar's Rules of Judicial Administration Committee in June 2015 and will be presented to the Board of Governors of The Florida Bar as proposed changes to the Florida Rules of Judicial Administration for a final vote before being submitted to the Supreme Court of Florida.

6. Business Process Analysis. At the Access Subcommittee Meeting on May 12, 2015, Workgroup 2 presented a memorandum outlining the concept of Business Process Analysis ("BPA"), its application to legal services and the cutting edge work of Seyfarth Shaw in this area. Since that time, Workgroup 2 reached out to the pro bono partner at Seyfarth Shaw, a leader in applying BPA in the legal arena, to learn more about its work helping Illinois Legal Aid programs create more efficient systems. Part of Seyfarth Shaw's work in Illinois included applying BPA to the statewide centralized intake system which covers 65 counties. Using BPA, Seyfarth Shaw helped Illinois redesign its centralized intake system to be more efficient and, as a result, assist more clients. Seyfarth Shaw's pro bono partner offered to answer questions and provide additional information that might help Florida legal aid programs apply BPA to its intake system. The Access Subcommittee is working with Melissa Moss of The Florida Bar Foundation (the "Foundation") and a team consisting of Foundation staff and Florida legal aid staff to further explore BPA and determine how it may be utilized to increase efficiency in Florida's legal aid community.

7. Tools, Training and Techniques. Following the Access Subcommittee conference call on August 13, 2015, Working Group 3 has compiled research and notes regarding the "tools, training, and techniques" that other states and Canada have used in improving access to, and delivery of, legal services in civil matters.

Our primary source of leads to these resources were the Access to Justice websites maintained by the National Center for State Courts,

<http://www.ncsc.org/microsites/access-to-justice/home/Topics/Access-to-Justice-Commissions.aspx>,

and by the American Bar Association,

http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice.html.

We have evaluated the information gleaned from these resources, the recommendations made by the other Working Groups, and the work done by The Florida Bar Standing Committee on Pro Bono Legal Services. Although we believe more consultation and study will be warranted before issuing any final report and recommendations, we recommend a focus on these measures:

- a. Tools. The most promising tools for improving access to justice are plainly technology innovations, allowing remote navigation of:
 - Non-profit legal services provider websites, voluntary bar pro bono resources, law school clinical programs, self-help forms and guides, Bar referral information, and “match” programs by prospective clients.
 - “Need help” submissions by prospective clients for perusal by pro bono volunteers.

Because prospective clients may lack access to personal computers and may have limited fluency in English and the navigation of websites, these tools should be designed to permit access from public library computer stations and with multiple language options.

We understand that Florida’s three statewide websites for the public, volunteer and legal aid attorneys (an integral part of an integrated online justice resource system) have already been transitioned to the Florida Justice Technology Center (FJTC)⁸ for upgrading in content

⁸ The Florida Justice Technology Center, a new statewide nonprofit dedicated to increasing access to justice through the innovative use of technology launched July 1, 2015. It is modeled on the only other statewide nonprofit access to justice technology entity in the country, Illinois Legal Aid Online. FJTC Board members include Commission members Greg Coleman and Kathy McLeroy. The Florida Justice Technology Center will work not only with legal aid and pro bono programs but also with the judiciary and the court system, clerks of court, lawyers, law schools, corporations, community partners, and others to develop technology products and services that will expand access to justice. It will coordinate and promote the use of technology by identifying efforts from around the state and around the country that could be implemented on a statewide basis in Florida—then take a leadership, coordinating and/or

and functionality. We also anticipate that FJTC's Board of Directors will include the technological development and maintenance of the online triage system and online pro bono referral system among its first priorities. Should that be the case it would be our expectation that FJTC would work closely with both the Access and Technology Subcommittee as well as take the lead in identifying the particular software and hardware products to be used to assure that will integrate with existing and future technologies in the legal aid, court and other systems. With FJTC Board approval, we also anticipate the entity will take over "building out" the centralized legal aid online intake system in 2016-2017 once LSGMI has complete its federally funded pilot development phase.

The Access Subcommittee will coordinate with the AJC Technology Subcommittee so that we can address the distribution and training requirements for recommended technology solutions.

b. Training. Commissions in other states have concluded that unmet civil legal needs are clustered in several categories: dissolution of marriage, child custody, domestic violence injunctions, housing (foreclosure, evictions), consumer protection, employment, public benefits, and health care issues (insurance coverage, medical expense indebtedness). In addition to the use of websites and software to assist potential clients and help them identify providers at the right price point (including free legal services, when the prospective client is eligible), webcasts and live training opportunities should include:

- Presentations to the prospective clients in these primary categories of "unmet civil needs," offered through public libraries, community centers, and places of worship, by attorneys who practice in the field and are able to provide basic guidance in a vocabulary that is helpful but understandable.
- Training for the "facilitators," who may be attorneys, paraprofessionals, librarians, law students, or other volunteers, who are willing to assist prospective clients in using the statewide triage gateway.

- Additional training (recognizing that significant training has already occurred) for Florida judges and in court clerks' and administrative offices regarding the filing of self-help forms and the referral of pro se parties to facilitators and the statewide triage gateway.
- Training for pro bono attorneys in each circuit, such that each circuit has a cadre of volunteers distributed across these "unmet civil needs" categories.

c. Techniques. Innovation no doubt will follow installation of the statewide Triage Gateway, but it is difficult to imagine that proven, existing techniques for assuring access and delivering services will change too dramatically in the interim. That said, the experience of other state access commissions and that of The Florida Bar's Standing Committee on Pro Bono Legal Services includes a number of techniques that warrant mention:

- Coordination at a statewide level, through the first-ever "all circuits" meeting of circuit pro bono committee chairpersons during the Bar meeting in September (with financial assistance for travel expenses provided by The Florida Bar Foundation). These efforts will be complemented by the addition of a statewide Director of Pro Bono at The Florida Bar Foundation mid-September and will also supplement the excellent work done by the Florida Pro Bono Coordinators Association and Florida Legal Services, Inc. (FLS)⁹ over the years.
- Recruitment of volunteer facilitators, paraprofessionals, and retired lawyers and judges, to supplement the existing base of pro bono lawyers in private practice. This includes the current plans to broaden the "Emeritus Attorneys Pro Bono Participation Program" as detailed in Chapter 12 of the Rules Regulating The Florida Bar.

⁹ While FLS will continue to provide important staff support to The Standing Committee on Pro Bono, the newly-created statewide Director of Pro Bono position will serve as a key connector among, and statewide conduit for, Florida's many pro bono stakeholders. The Florida Bar Foundation also assumed direct funding and other support for the Florida Pro Bono Coordinators Association in 2015.

- Early inclusion of law school clinical programs and law students in the use of the existing websites and the statewide triage gateway as it is developed. Law students today are immersed in social media and on-line information systems, but they must be shown how this technology is used to assist prospective clients in the “unmet civil needs” problem categories. Should law school education include a mandatory course or professional responsibility segment on access to civil justice and the pro bono/non-profit legal services landscape?
- Adoption of private enterprise techniques for “process improvement,” and development of appropriate metrics to supplement the pro bono hours/pro bono contributions information solicited by The Florida Bar via the annual renewal process. We have not yet identified a reliable measure for unmet civil legal needs (persons, categories of matters, average hours required for matters in a category) that will permit the Commission’s leadership to measure progress. Certain measures—for example, the number and percentage of pro se parties in various categories of civil cases—are available and provide limited insight, but more detailed metrics should be recorded. Centralized telephone and online intake by legal aid/pro bono service providers and data collection initiated as part of the statewide triage gateway and intake, for example, could provide much of the appropriate data. The Commission’s Outreach Subcommittee is also evaluating demographic information in an effort to quantify the numbers of persons with unmet civil legal needs who simply give up because of cost, lack of information, language skills, disabilities, distance, distrust, or other barriers.
- Continued monitoring of new best practices in this area as developed nationally by such groups as the Pro Bono Institute, the American Bar Association, the National Center for State Courts, and the access to justice commissions in a majority of the states in the United States.

Access to and Delivery of Legal Services



Access to and Delivery of Legal Services

Identify and examine barriers that impede access to civil justice for disadvantaged, low-income, and moderate income Floridians.

Determine how to promote coordination of legal services delivery to low-income Floridians, for optimum efficiency and effectiveness.

Identify and build partnerships among the courts, members of the private bar, providers of legal services, and other stakeholders who are engaged or interested in expanding access to civil justice for disadvantaged, low-income and moderate-income Floridians.

Access to and Delivery of Legal Services

William Van Nortwick, Chair
John Attaway
Judge Timothy Corrigan
Jim Kowalski
Kristen Lentz
Donny MacKenzie
Kathy McLeroy
John Patterson
Judge Vance Salter



TRIALS & LITIGATION

Middle-Class Dilemma: Can't Afford Lawyers, Can't Qualify for Legal Aid

POSTED JUL 22, 2010 01:36 PM CDT

BY DEBRA CASSENS WEISS

The Justice Gap

The Opinion Pages | EDITORIAL

The New York Times

Addressing the Justice Gap

AUG. 23, 2011

Email

Share

Most low-income Americans cannot afford a lawyer to defend their legal interests, no matter how urgent the issue. Unless they are in a criminal case, most have no access to help from government-financed lawyers either.

The Justice Gap

Only 16% to 29% of Americans with civil legal problems (including 25% of defendants in non-family civil cases filed in court) engage the services of lawyers to assist them.

The Legal Needs Of The General Population

Only 16% of the persons who reported having civil legal issues during the past year obtained legal help in addressing them.

The Legal Needs of Low Income Persons

Less than 20 percent of the legal needs of low-income Americans are being met.

When confronted with a civil legal problem, 30 percent of low-income Americans give up and seek no legal redress.

For every client served by a federally-funded legal aid program someone else seeking help is turned away.

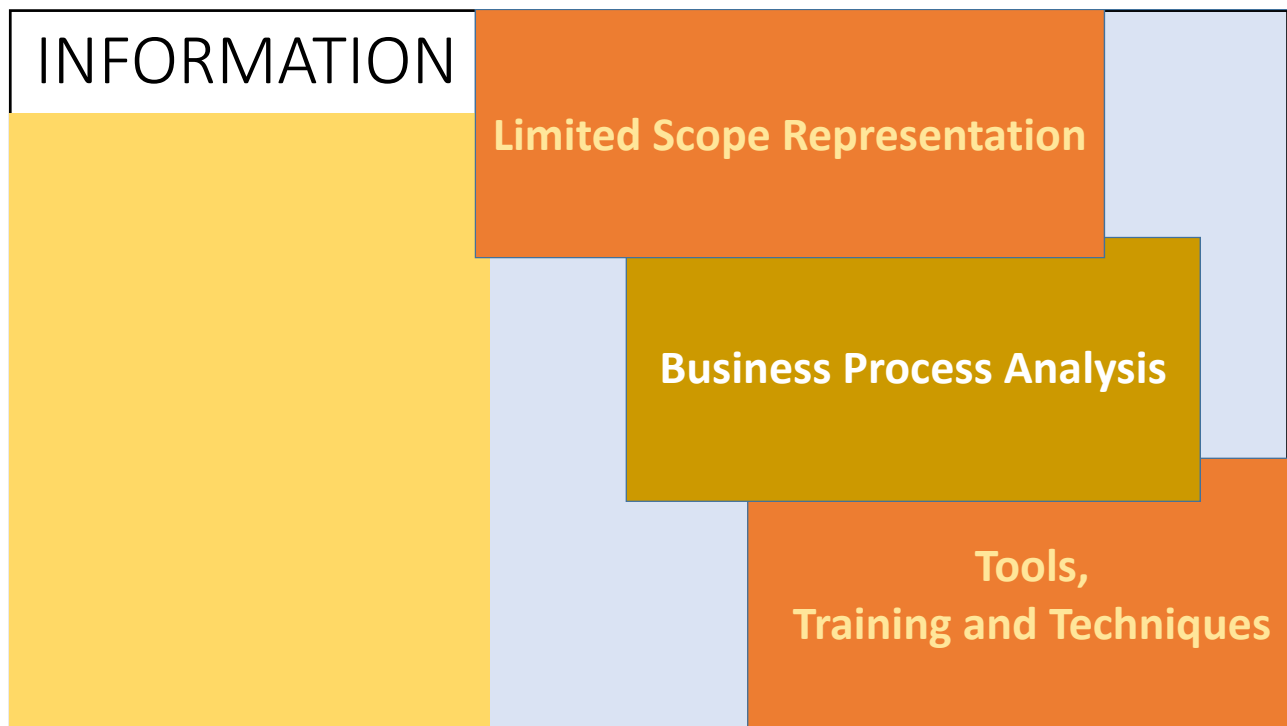
The Justice Gap

Prevalence Of Persons Appearing In Court Without Lawyers

IN MANY COURTS, 90% OF PARTIES IN RESTRAINING ORDER MATTERS ARE UNREPRESENTED.

IN NYC, 90% OF RESPONDENTS IN HOUSING COURT ARE UNREPRESENTED.

80% OF DIVORCE CASES IN FLORIDA HAD AT LEAST ONE PRO SE LITIGANT



Limited Scope Representation

The Vision Access Committee drafted proposed changes
To the Florida Rules of Civil Procedure and Florida Rules of Judicial Administration

TO ALLOW ATTORNEYS TO UNDERTAKE PORTIONS OF CASES IN CIVIL LITIGATION.

Unbundled legal services is also known as “limited scope representation” or “limited appearance representation,”

which will be presented to The Florida Bar

Can increase pro bono and may serve to make legal services more affordable for those who can afford to pay for discrete tasks.

Business Process Analysis

A Vision of an Integrated Service-Delivery System

Technology can and must play a vital role in transforming service delivery so that all poor people in the United States with an essential need for legal services have access to justice.

The strategy for implementation is:

1. Creating in each state a process, directs personal assistance and guides
2. Deploying sophisticated creation of legal documents by service providers and by litigants themselves and linking the document creation process to the delivery of legal information and limited scope legal representation
3. Taking advantage of mobile technologies to reach more persons more effectively
4. Applying business process analysis to all access-to-justice activities to make them as efficient as practicable
5. Developing "expert systems" to assist lawyers and other services providers

APPLYING BUSINESS PROCESS ANALYSIS TO ALL ACCESS-TO-JUSTICE PROCESSES TO MAKE THEM AS EFFICIENT AS PRACTICABLE.

BUSINESS PROCESS ANALYSIS involves the disciplined “mapping” of how a task or function is performed, using standard conventions for depicting different aspects of the process.

The process is often led by an outside expert in the use of the analysis, but it engages enough members of the organization to ensure a complete understanding of how the task or function is performed at all levels of the organization.

Tools, Training and Techniques

THE MOST PROMISING TOOLS?
Plainly technology innovations...

PAY ATTENTION TO:
Accessibility AND Language

TECHNIQUES

- Coordinate at the statewide level
- Use facilitators
- Include law school clinics & students
- Look at law school education
- Adopt private enterprise tactics
- Continuously monitor best practices across the country

TRAINING:

PUBLIC – Outreach, information & education
FACILITATORS – Attorneys, librarians, law students
JUDGES, CLERKS & ADMINISTRATORS – Additional training
PRO BONO ATTORNEYS – At the circuit level on unmet needs

ACTION

100% ACCESS



Conference of
CHIEF JUSTICES

RESOLUTION 23 IN 2001

The promise of equal justice is not realized for individuals and families who have no meaningful access to the justice system.

RESOLUTION 2 IN 2008

Take steps to ensure that no citizen is denied access to the justice system due to the lack of resources, or any other such barrier.

ACTION

100% ACCESS

CCJ/COSCA Resolution 5:

REAFFIRMING THE COMMITMENT TO MEANINGFUL ACCESS TO JUSTICE FOR ALL

Support the aspirational goal of
100 percent access to
effective assistance for
essential civil legal needs

WHEREAS, the Conference of Chief Justices acknowledged in 2001 in Resolution 23 that the promise of equal justice is not realized for individuals and families who have no meaningful access to the justice system and that the Judicial Branch has the primary leadership responsibility to ensure access for those who face impediments they cannot surmount on their own; and

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators passed Resolution 2 in 2008 recognizing that ensuring access to justice in adversarial proceedings involving basic human needs, such as shelter, sustenance, safety, health, and child custody is one of the Conferences' highest priorities and encouraged their members to take steps to ensure that no citizen is denied access to the justice system due to the lack of resources, or any other such barrier; and

WHEREAS, significant advances in creating a continuum of meaningful and appropriate services to secure effective assistance for essential civil legal needs have been made by state courts, national organizations, state Access to Justice Commissions and other similar bodies, and state bar associations during the last decade; and

WHEREAS, these advances include, but are not limited to, expanded self-help services to litigants, new or modified court rules and processes that facilitate access, discrete task representation by counsel, increased pro bono assistance, effective use of technology, increased availability of legal aid services, enhanced language access services, and triage models to match specific needs to the appropriate level of services;

RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators support the aspirational goal of 100 percent access to effective assistance for essential civil legal needs and urge their members to provide leadership in achieving that goal and to work with their Access to Justice Commission or other such entities to develop a strategic plan with realistic and measurable outcomes; and

BE IT FURTHER RESOLVED that the Conferences urge the National Center for State Courts and other national organizations to develop tools and provide assistance to states in achieving the goal of 100 percent access through a continuum of meaningful and appropriate services.

ACTION

**100%
ACCESS**

**"SOME FORM OF EFFECTIVE ASSISTANCE
FOR 100% OF PERSONS OTHERWISE UNABLE
TO AFFORD AN ATTORNEY FOR DEALING
WITH ESSENTIAL CIVIL LEGAL NEEDS,"**

ACTION

**EMERITUS
RULE**

Why Emeritus Attorney Pro Bono Programs?

Emeritus attorney pro bono programs provide a limited license for retired and non-practicing lawyers who otherwise may retire from the active practice of law to practice on a volunteer basis for non-profit legal services providers serving vulnerable seniors and low- and moderate-income individuals.

The program is designed to supplement existing legal services. They can be a critical component of the aging network or the legal services delivery system for low- and moderate-income individuals.

Supplement Existing Legal Services



Well equipped for Community Education



Emeritus attorney pro bono programs have at least three policy implications for delivery of direct services. The first impact is that the programs offer additional resources and are one method of supplementing existing legal services in light of growing need and finite resources. The second is that emeritus attorneys are well-equipped to provide community legal education programs, which have the potential to help seniors and low- and moderate-income individuals avoid legal crises. The third is that emeritus attorneys may be more readily used to reach out to provide legal services to homebound residents, residents of hospitals, long-term care facilities, and hospices; clients in rural and urban areas with limited transportation; and others who are unable to come to an office or clinic.

**More readily available for the homebound or hospitalized,
clients in rural, urban areas without transportation.**

The volunteer attorney becomes a broker between the client and a complex social and legal system. The attorney gains an awareness of the unique legal needs of individuals in the greatest social and economic need.



ACTION

EMERITUS RULE

INCREASE THE NUMBER OF PARTICIPANTS IN THE

PROGRAM: Permit retired judges, law professors, both retired and active, to serve as emeritus attorneys.

EXPAND THE PERMITTED SCOPE OF WORK OF EMERITUS

ATTORNEYS: Allow emeritus attorneys to provide advice and assistance to clients whose legal problems are not subject to litigation.

ACTION

EMERITUS RULE

RULE 12-1.2 DEFINITIONS

(a) **Emeritus Attorney.** An "emeritus attorney" is any person, who,

(1) ~~is either inactive or retired from the active~~ practice of law ~~for compensation, and~~

a. ~~is or was licensed in the state of Florida and does not maintain a registered law office in Florida, or~~

b. ~~is or was licensed to practice law in any other state or territory of the United States or the District of Columbia, and does not maintain a registered law office therein or in Florida;~~

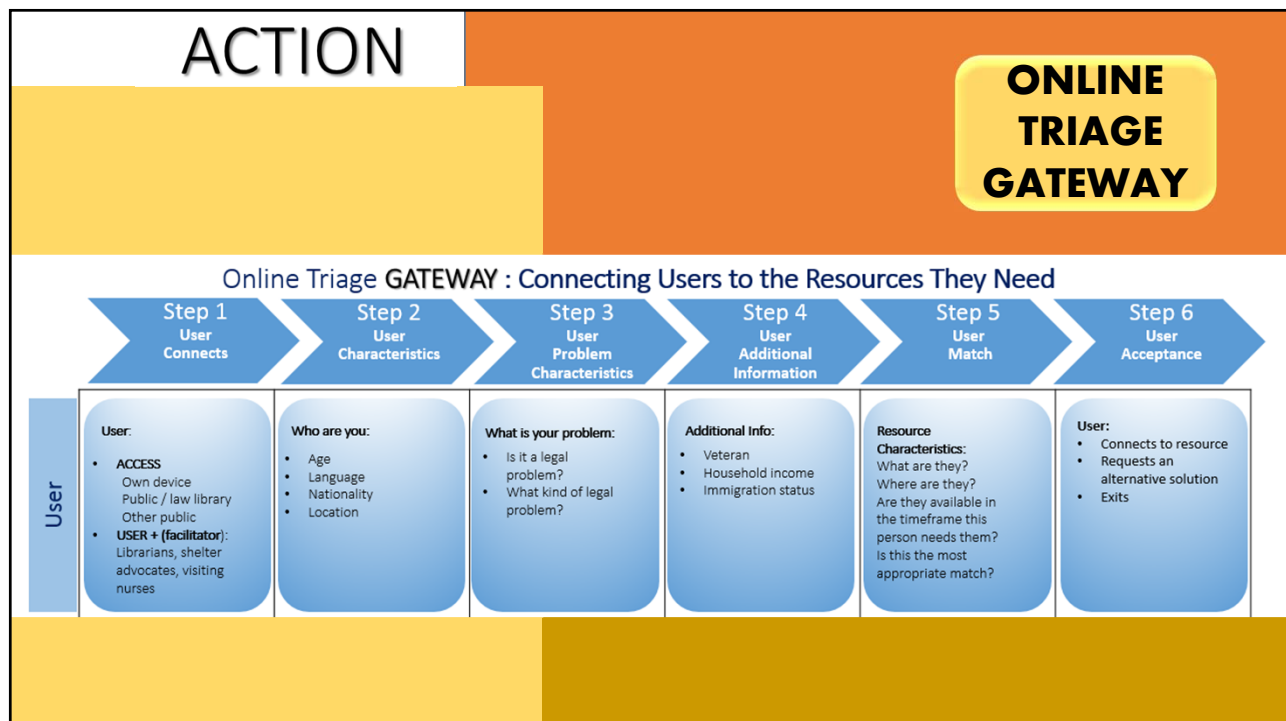
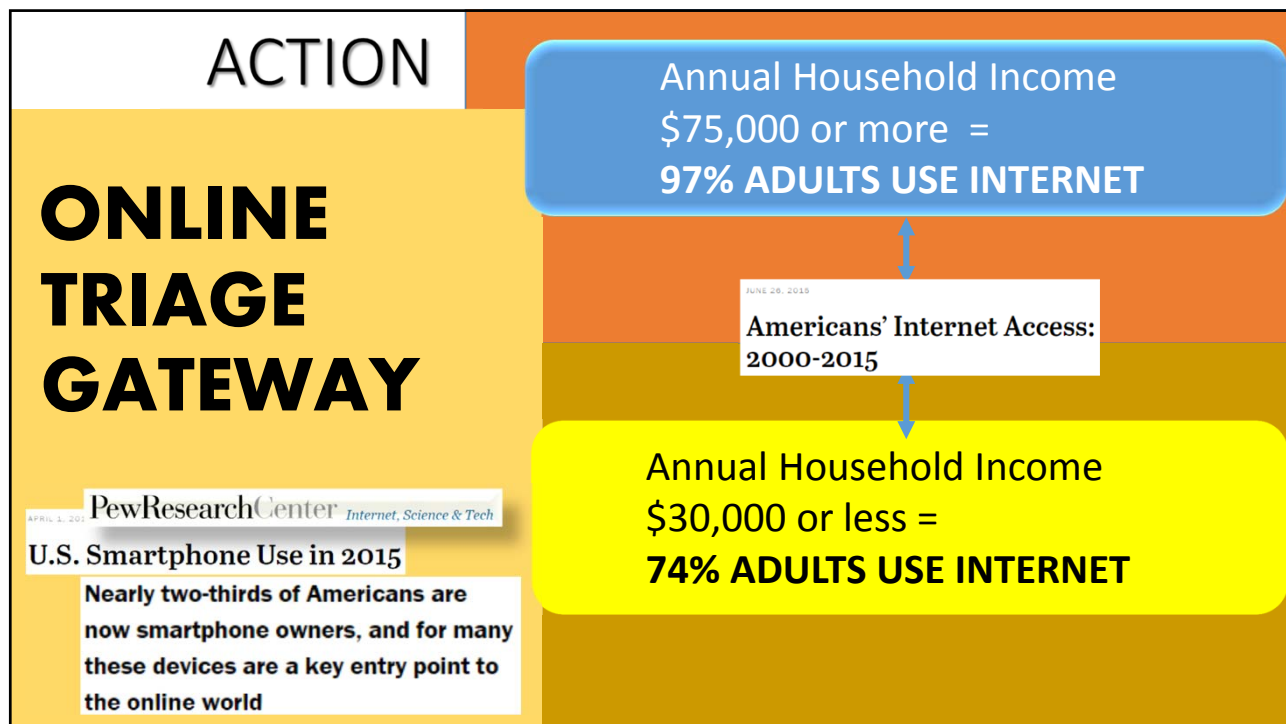
(2) ~~served as a judge in Florida or any other state or territory of the United States or the District of Columbia;~~

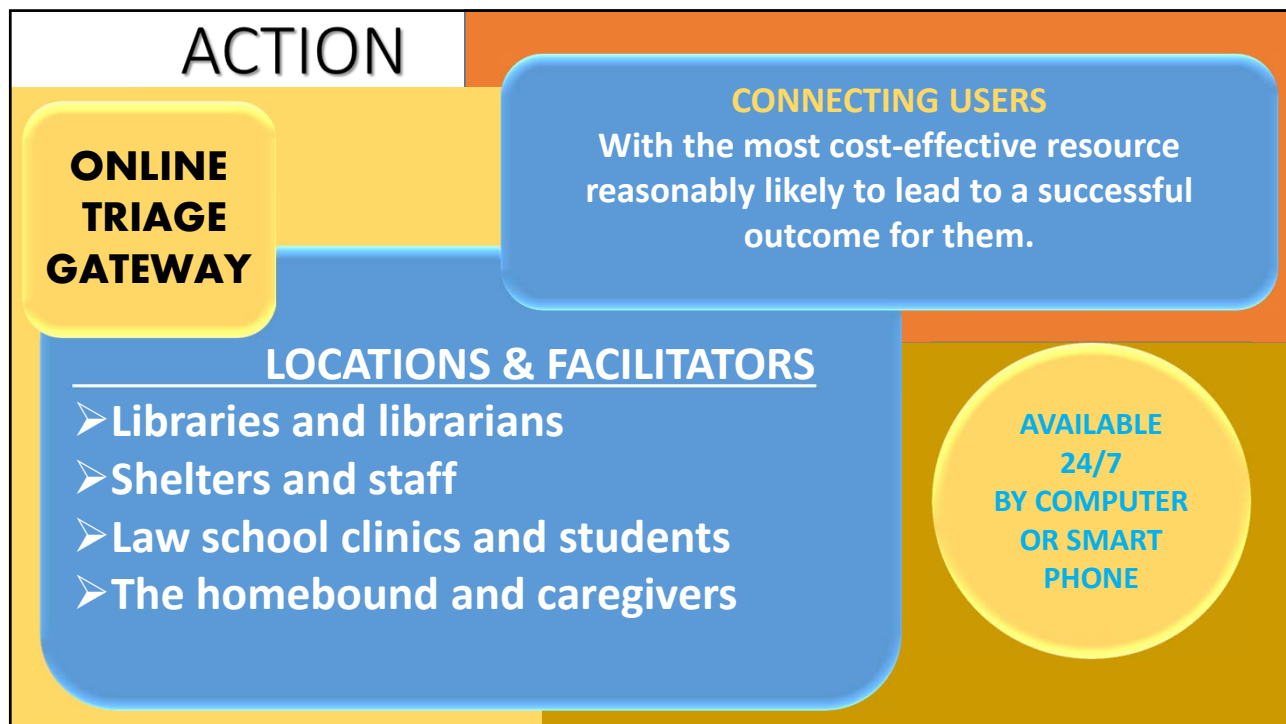
(3) ~~is an authorized house counsel certified by the Supreme Court of Florida, or,~~

(4) ~~is or was a full time law professor employed by an American Bar Association-accredited law school and who;~~

~~(a) —~~

a. ~~for at least ten years before applying to participate in the emeritus program was engaged in one or more of the following: the active practice of law, which includes, but is not limited to private practice, authorized house counsel, or public employment: service as a judge in Florida or any other state or territory of the United States or the District of Columbia; or full time employment as a law professor at or by an American Bar Association-accredited law school;~~





ACTION

ONLINE TRIAGE GATEWAY

CONNECTING Justice Communities **probono.net**

Home About Our Programs Contact Search

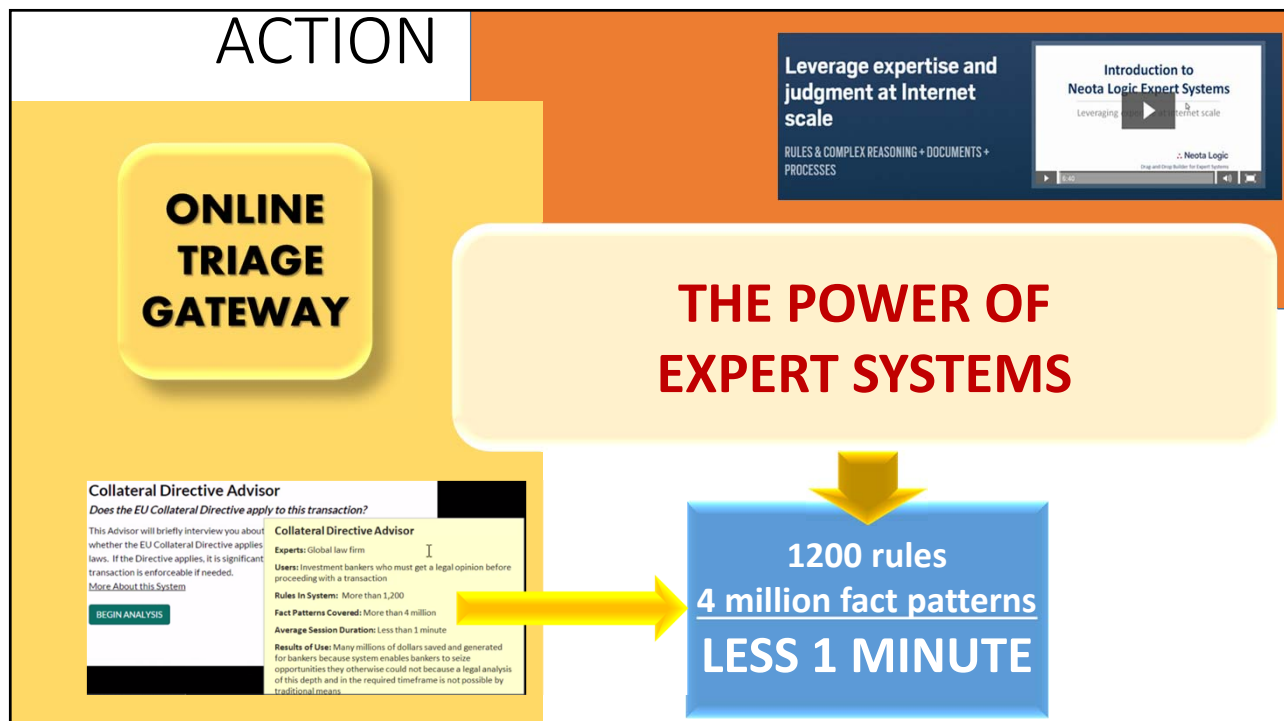
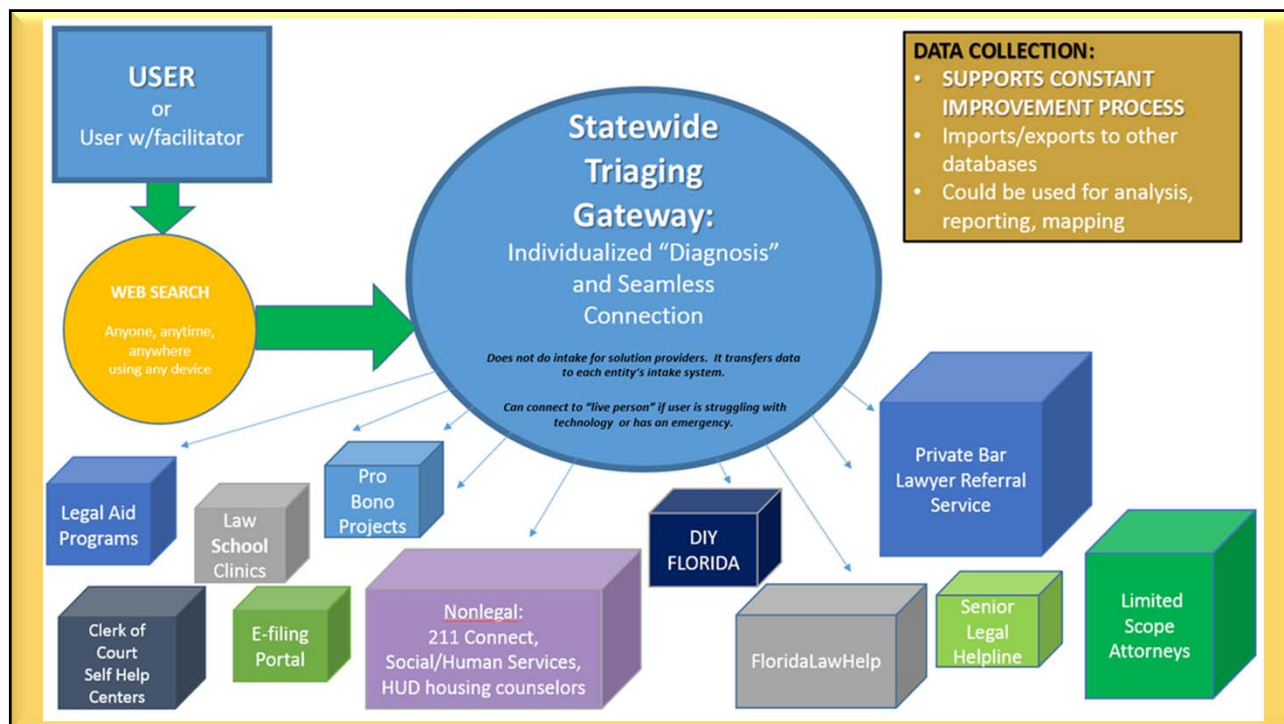
About This Blog
Connecting Justice Communities is the blog of Pro Bono Net, a nonprofit leader in increasing access to justice through innovative uses of technology and

Home > Legal Services > LSNTAP Webinar: Beyond Online Intake: Looking at Triage and Expert Systems Webinar Summary

LSNTAP Webinar: Beyond Online Intake: Looking at

TRIAGE is the rational distribution of resources based on litigant need and case complexity to insure that all litigants have access to justice.

The triage process sorts resources and people to reach the most fair and just result for all involved.



ACTION

ONLINE TRIAGE GATEWAY

Working with
NEW MEXICO LEGAL AID on a
statewide triage program

Neota Logic

DEMOS PLATFORM APPL

Access to Justice & Technology

Everyone, anytime, anywhere

POSTED ON APR 16, 2014

"Eighty percent of low income people have trouble obtaining legal representation or otherwise accessing the civil court system to protect their property, family, and livelihood." (Biennan Center for

A typical Neota Logic application, when run interactively, will:

Ask questions ...

Collect data ...

Apply reasoning ...

Reach conclusions ...

Execute actions ...

NEOTA LOGIC

What's our stake in access to justice? We're working with Pro Bono Net and New Mexico Legal Aid on a statewide triage program. We're working with North Penn Legal Services and Start Small Think Big.

Each of the five elements of the integrated service delivery model. We support Georgetown University Law Center and other organizations. We collaborate with access to justice organizations to build solutions for people through complex legal problems. And, we agree

LSC | America's Partner
for Equal Justice

LEGAL SERVICES CORPORATION

A Vision of an Integrated Service-Delivery System

Technology can and must play a vital role in transforming service delivery so that all poor people in the United States with an essential civil legal need obtain some form of effective assistance.

The strategy for implementing this vision has five main components:

1. Creating in each state a unified "legal portal" which, by an automated triage process, directs persons needing legal assistance to the most appropriate form of assistance and guides self-represented litigants through the entire legal process
2. Deploying sophisticated document assembly applications to support the creation of legal documents by service providers and by litigants themselves and linking the document creation process to the delivery of legal information and limited scope legal representation
3. Taking advantage of mobile technologies to reach more persons more effectively
4. Applying business process analysis to all access-to-justice activities to make them as efficient as practicable
5. Developing "expert systems" to assist lawyers and other services providers

ONLINE TRIAGE GATEWAY

December 30, 2013

WASHINGTON--The Legal Services Corporation (LSC) today released the report of a national summit on ways to use technology to provide all Americans some form of effective assistance with essential civil legal needs.

More than 75 representatives of legal aid programs, courts, government, and business as well as technology experts, academics, and private practitioners convened at two sessions in 2012 and 2013 to explore the many ways technology can expand access to justice.

Creating in each state a unified "legal portal" which, by an automated triage process, directs persons needing legal assistance to the most appropriate form of assistance.

Technology to Expand
concrete recommendations
ce through an integrated
knowledge and wisdom of
ters and mobile devices.

ACTION

The **STATE JUSTICE INSTITUTE** funded
THE SELF-REPRESENTED LITIGANTS NETWORK
& **THE NATIONAL CENTER FOR STATE COURTS**

A litigant portal must go far beyond the current functionality of courts and legal services. They mostly offer static information, and then hand off the litigant to a person for further help. Ideally, a true litigant portal will interact with the litigant using a structured, research-based algorithm. In doing so, the portal may be using an expert system or intelligent checklist with the litigant needing to know that. It can use probabilistic analysis based on prior case statistics to recommend certain actions or at least indicate the likely results of various actions.



“By the end of 2015, identified business & technical requirements should be available for use as a guide for pilot projects.”

ACTION ITEMS

**Recommend Adoption of
CCJ/COSCA Resolution**

**Recommend Adoption of
Emeritus Rule**

**Recommend Online
Triage Gateway Pilot**

MOTION

RESOLUTION

Move that the Commission recommend the Supreme Court of Florida approve the Commission adoption of The Conference of Chief Justices/Conference of State Court Administrators Resolution 5: Reaffirming the Commitment to Meaningful Access to Justice for All

MOTION

EMERITUS RULE

Move that the Commission recommend the Supreme Court of Florida the proposed revisions to Rule 12 of The Rules Regulating The Florida Bar to the Commission for its consideration.

MOTION

ONLINE TRIAGE GATEWAY PILOT

Move that the Commission recommend the Supreme Court of Florida approve the continued development of the Gateway and approve a pilot project subject to obtaining adequate funding. If funding is obtained, the Chief Justice or Acting Chair of the Commission should be empowered to authorize the commencement of the pilot project without further Commission vote.

DISCUSSION:

1) Recommend Adoption of CCJ/COSCA Resolution 5:

WHEREAS, the Conference of Chief Justices acknowledged in 2001 in Resolution 23 that the promise of equal justice is not realized for individuals and families who have no meaningful access to the justice system and that the Judicial Branch has the primary leadership responsibility to ensure access for those who face impediments they cannot surmount on their own; and

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators passed Resolution 2 in 2008 recognizing that ensuring access to justice in adversarial proceedings involving basic human needs, such as shelter, sustenance, safety, health, and child custody is one of the Conferences' highest priorities and encouraged their members to take steps to ensure that no citizen is denied access to the justice system due to the lack of resources, or any other such barrier; and

WHEREAS, significant advances in creating a continuum of meaningful and appropriate services to secure effective assistance for essential civil legal needs have been made by state courts, national organizations, state Access to Justice Commissions and other similar bodies, and state bar associations during the last decade; and

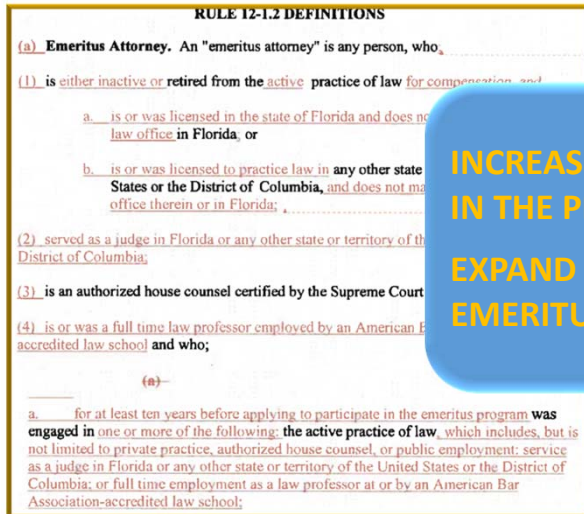
WHEREAS, these advances include, but are not limited to, expanded self-help services to litigants, new or modified court rules and processes that facilitate access, discrete task representation by counsel, increased pro bono assistance, effective use of technology, increased availability of legal aid services, enhanced language access services, and triage models to match specific needs to the appropriate level of services;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators support the aspirational goal of 100 percent access to effective assistance for essential civil legal needs and urge their members to provide leadership in achieving that goal and to work with their Access to Justice Commission or other such entities to develop a strategic plan with realistic and measurable outcomes; and

BE IT FURTHER RESOLVED that the Conferences urge the National Center for State Courts and other national organizations to develop tools and provide assistance to states in achieving the goal of 100 percent access through a continuum of meaningful and appropriate services.

DISCUSSION:

2) Recommend Adoption of Emeritus Rule



INCREASE THE NUMBER OF PARTICIPANTS IN THE PROGRAM

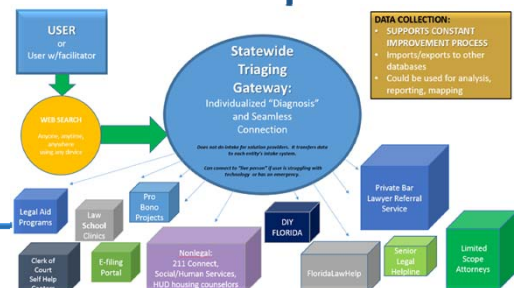
EXPAND THE PERMITTED SCOPE OF WORK OF EMERITUS ATTORNEYS

DISCUSSION:

3) Recommend Online Triage Gateway Pilot

Approve the continued development of the Gateway and approve a pilot project subject to obtaining adequate funding.

If funding is obtained, the Chief Justice or Acting Chair of the Commission should be empowered to authorize the commencement of the pilot project without further Commission vote.



Access to and Delivery of Legal Services



DOCUMENTING THE JUSTICE GAP

When trying to measure the extent to which the American legal system is meeting the legal needs of the general population, we look to several different information sources:

- Studies of the legal needs of the general population,
- Studies of the legal needs of low income persons, and
- The prevalence of persons appearing in court without legal representation.

These different approaches lead to estimates that from 16% to 29% of Americans with civil legal problems (including 25% of defendants in non-family civil cases filed in court) engage the services of lawyers to assist them.

Studies Of The Legal Needs Of The General Population

- 16% of the persons who reported having civil legal issues during the past eighteen months obtained legal help in addressing them. Most of the respondents did not perceive their problems as legal problems, did not believe they needed advice to deal with them, and turned to family and friends when they thought they needed advice.ⁱ
- In a presentation to the Florida Bar in 2013, consultant Jordan Furlong of Edge International Consulting estimated that Americans at all income levels today obtain help from lawyers with only 15% of their civil legal problems. He also noted some national and international statistics:
 - 80 percent of divorce cases in Florida include at least one pro se litigant.
 - 80 to 85 percent of legal consumers in California are self-represented.
 - 88 percent of Canadians chose a non-lawyer option to resolve their justiciable issues.
 - 84 percent of legal needs of United Kingdom small businesses were resolved without lawyers.ⁱⁱ

Studies Of The Legal Needs Of Low Income Persons

The Legal Services Corporation reports that legal services organizations nationwide have the resources to meet only 20% of the civil legal needs of persons eligible for services under LSC guidelines.ⁱⁱⁱ

The Washington State Supreme Court has conducted two recent studies of the legal needs of low and lowest income households in its state, in 2003 and 2014.

- The 2003 study found that poor households averaged 3 legal issues per year and that 12% of those needs were addressed by lawyers.

- The 2014 study found that the number of legal issues per household had trebled (to over 9 per year) and that the percentage of them referred for legal help had risen to 24%. Seventeen percent of the issues were completely resolved by legal help.^{iv}

Prevalence Of Persons Appearing In Court Without Lawyers

Courts have not consistently recorded the representation status of litigants. In 2013, the National Center for State Courts published recommended statistical standards for this topic. Few courts and state court systems have yet implemented the standards.

The Maricopa County Superior Court in Phoenix, Arizona has tracked the representation status of family cases since the early 1990s. Recent data shows that

- 60% of family cases in that court have no lawyers,
- 30% have a lawyer on one side, and
- 10% have lawyers on both sides.^v

In sum, 25% of parties in family cases in that court are represented by lawyers.

Anecdotal reports from other parts of the country are that 85% (a slightly lower percentage) of all family law cases have at least one self-represented party. If the distribution of partially represented and fully self-represented cases in other states is the same as that in Maricopa County, this would mean that 29% of family law litigants have legal representation.

- In many courts, 10% of parties in domestic violence restraining order matters are represented.^{vi}
- New York City reports that 10% of respondents in its Housing Court are represented.^{vii}

The National Center for State Courts is collecting data for the Conference of Chief Justices' Civil Justice Initiative, which focuses on non-family civil matters. In ten randomly chosen urban counties, it has found that:

Plaintiffs are represented in:

- over 95% of contract, tort, and real property cases,
- in 80% of "other" civil cases, and
- in 68% of small claims cases.

The NCSC researchers suggest that the latter figure shows that corporate creditors are choosing small claims courts as the venue for debt collection actions.

Defendants, on the other hand, are represented in:

- only 2% of small claims,
- 21% of contract matters,
- 33% of “other” civil matters,
- 41% of real property matters, and
- 64% of tort cases.^{viii}

The tort cases show the importance of insurance as a funding source for legal representation.

Aggregating the NCSC data shows that only 25% of defendants in the 650,000 general civil cases analyzed by NSCS are represented – virtually the same as the percentage of family law litigants reported to be represented by counsel in many states.

ⁱ Rebecca Sandefur, Accessing Justice in the Contemporary USA: The Community Needs and Services Study, American Bar Foundation, 2014. funded by the National Science Foundation and the American Bar Foundation, and conducted through the American Bar Foundation, involved intensive interviewing of a representative sample of residents in a Midwestern city <http://www.floridabar.org/DIVCOM/JN/JNNews01.nsf/RSSFeed/C48FFE62AEBC2EA85257D0E00424A1E> and Florida Bar PRI, Video #11: A Transforming Legal Environment: Setting a New Course for Success

<https://www.youtube.com/watch?v=yudrtdb-JNQ>

ⁱⁱⁱ Legal Services Corporation President Jim Sandman, Rethinking Access to Justice, Hawaii Access to Justice Conference June 20, 2014 <http://www.lsc.gov/rethinking-access-justice-james-j-sandman-hawaii-access-justice-conference#sthash.I3RxFNzE.dpuf>

^{iv} Washington State Supreme Court Civil Legal Needs Study Update, June 2015 <http://ocla.wa.gov/wp-content/uploads/2015/07/CLNS14-Executive-Report-7-13-2015-FINAL.pdf>

^v Communication to John Greacen in 2011.

^{vi} Herman, Madelynn. 2006. “Pro Se Statistics.” National Center for State Courts. https://www.nacmnet.org/sites/default/files/04Greacen_ProSeStatisticsSummary.pdf (siting data from California)

^{vii} Office of the Deputy Chief Administrative Judge for Justice Initiatives. 2005. Self-Represented Litigants: Characteristics, Needs, Services: The Results of Two Surveys. Self-Represented Litigants in the New York City Family Court and New York City Housing Court. New York, NY: Office of the Deputy Chief Administrative Judge for Justice Initiatives. https://www.nycourts.gov/reports/AJJI_SelfRep06.pdf (visited April 9, 2015).

^{viii} Paula Hannaford-Agor, Scott Graves & Shelley Spacek-Miller, The Landscape of Civil Litigation in State Courts (work in progress)

FLORIDA'S LEGAL AID SYSTEM AND THE LEGAL NEEDS OF LOW INCOME FLORIDIANS

- Florida pop. 2014 Census est. 19,893,293¹
- 16.3% @ 100% poverty 3,242,646²
(LSC Guidelines = 125%)
- If 1 in 4 has legal problem annually 810,661³
- # total staff/pro bono cases 80,675⁴
closed in 2014 by all Foundation Grantees

The Florida Bar Foundation provides Legal Assistance to the Poor (LAP) general support funding to 30 general support grantees, seven of which also receive federal Legal Services Corporation funding⁵.

According to LSC's 2009 report *Documenting the Justice Gap in America*, 50% of all those who sought legal assistance from LSC grantees were turned away. State studies consistently show a higher percentage (80%) of the civil legal needs of the eligible population are not being met. A recent study by the Boston Bar Association found that in Massachusetts civil legal aid programs turn away 64% of eligible cases. Nearly 33,000 low-income residents in Massachusetts were denied the aid of a lawyer in life-essential matters involving eviction; foreclosure; and family law such as cases involving child abuse and domestic violence. People seeking assistance with family law cases were turned away 80% of the time. New York's recent findings confirm national data that less than 20% of all civil legal needs of low-income families and individuals are met.⁶

See also LSC by the Numbers⁷

¹<http://quickfacts.census.gov/qfd/states/12000.html>

² Ibid.

³ Since 2005, seven states have conducted legal needs studies using similar methodologies. The findings of these studies were also compared to the nine state studies conducted during 2000-2005 that were discussed in the 2005 report and the Comprehensive Legal Needs Study funded by the American Bar Association and released in 1994.

www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf

ACCESS ACROSS AMERICA FIRST REPORT OF THE CIVIL JUSTICE INFRASTRUCTURE MAPPING PROJECT OCTOBER 7, 2011 Rebecca Sandefur, American Bar Foundation at The most recent national survey of low- and middle-income households in the U.S. found that about half of these households were experiencing at least one problem that had civil legal aspects, raised civil legal issues and was potentially actionable under civil law

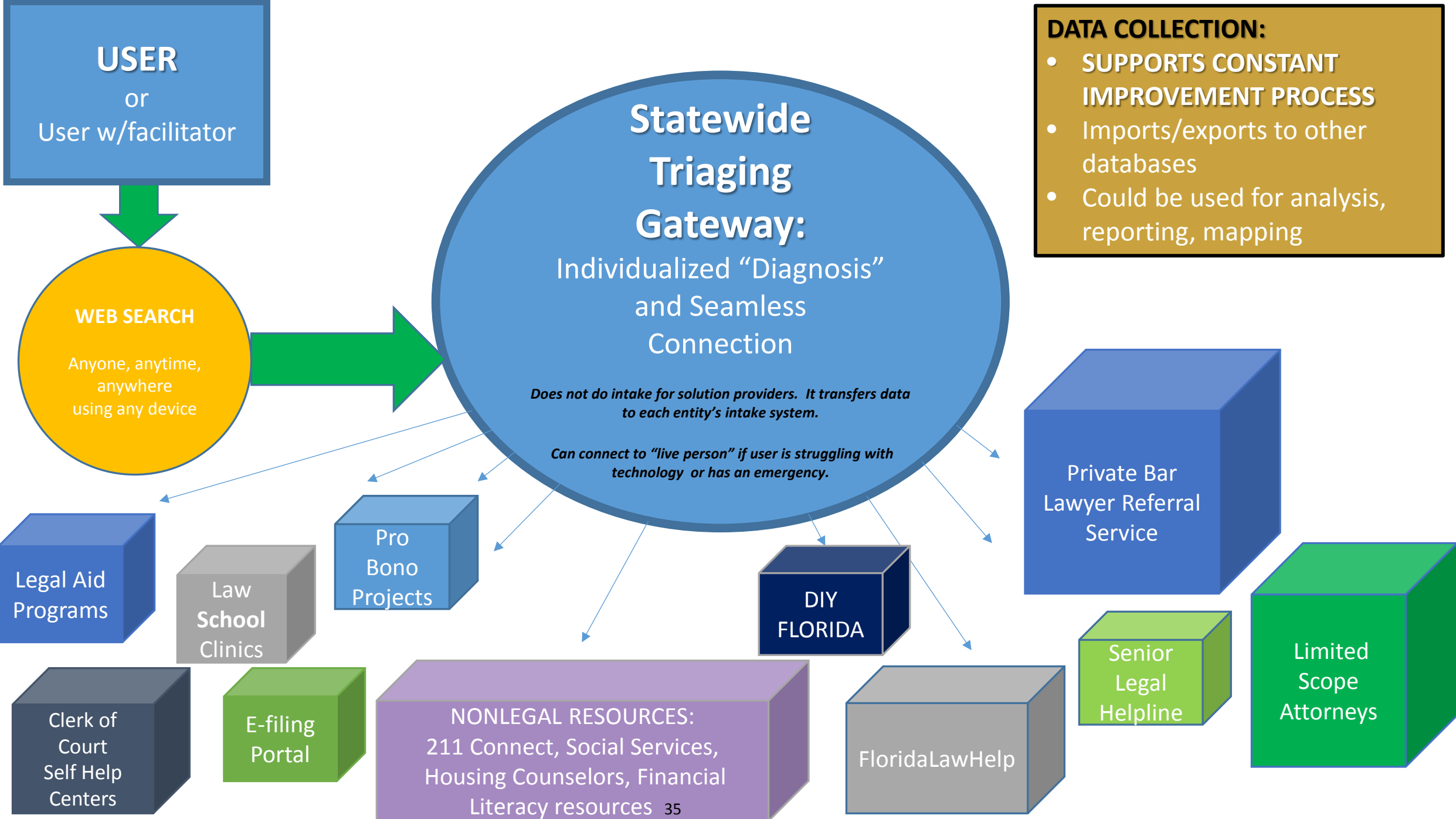
www.americanbarfoundation.org/uploads/cms/documents/access_across_america_first_report_of_the_civil_justice_infrastructure_mapping_project.pdf

⁴ 2014 aggregated year end case closing statistics, 30 general support grantees, The Florida Bar Foundation. See also 2012 FBF Legal Assistance to the Poor program overview. P. 1. "Foundation-funded providers completed 89,720 cases in 2012" <http://www.flabarfndn.org/grant-programs/documents/2012FBFLAPOverview.pdf>

⁵ For a map and listing of 2014-2015 LAP grantees see. <http://www.flabarfndn.org/grant-programs/grantees/2014-15-lap-support.aspx>

⁶ <http://www.lsc.gov/what-legal-aid/unmet-need-legal-aid>

⁷ <http://www.lsc.gov/media-center/publications/2014-lsc-numbers>



**CONFERENCE OF CHIEF JUSTICES
CONFERENCE OF STATE COURT ADMINISTRATORS**

RESOLUTION 5

Reaffirming the Commitment to Meaningful Access to Justice for All

WHEREAS, the Conference of Chief Justices acknowledged in 2001 in Resolution 23 that the promise of equal justice is not realized for individuals and families who have no meaningful access to the justice system and that the Judicial Branch has the primary leadership responsibility to ensure access for those who face impediments they cannot surmount on their own; and

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators passed Resolution 2 in 2008 recognizing that ensuring access to justice in adversarial proceedings involving basic human needs, such as shelter, sustenance, safety, health, and child custody is one of the Conferences' highest priorities and encouraged their members to take steps to ensure that no citizen is denied access to the justice system due to the lack of resources, or any other such barrier; and

WHEREAS, significant advances in creating a continuum of meaningful and appropriate services to secure effective assistance for essential civil legal needs have been made by state courts, national organizations, state Access to Justice Commissions and other similar bodies, and state bar associations during the last decade; and

WHEREAS, these advances include, but are not limited to, expanded self-help services to litigants, new or modified court rules and processes that facilitate access, discrete task representation by counsel, increased pro bono assistance, effective use of technology, increased availability of legal aid services, enhanced language access services, and triage models to match specific needs to the appropriate level of services;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators support the aspirational goal of 100 percent access to effective assistance for essential civil legal needs and urge their members to provide leadership in achieving that goal and to work with their Access to Justice Commission or other such entities to develop a strategic plan with realistic and measurable outcomes; and

BE IT FURTHER RESOLVED that the Conferences urge the National Center for State Courts and other national organizations to develop tools and provide assistance to states in achieving the goal of 100 percent access through a continuum of meaningful and appropriate services.

Adopted as proposed by the CCJ/COSCA Access, Fairness and Public Trust Committee at the 2015 Annual Meeting.

CHAPTER 12. EMERITUS ATTORNEYS PRO BONO PARTICIPATION PROGRAM

12-1. GENERALLY

RULE 12-1.1 PURPOSE

Individuals admitted to the practice of law in Florida have a responsibility to provide competent legal services for all persons, including those unable to pay for such services. As one means of meeting these legal needs, the following rules establishing the emeritus attorneys pro bono participation program are adopted.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 12-1.2 DEFINITIONS

(a) Emeritus Attorney. An "emeritus attorney" is any person, who:

- (1) is either inactive or retired from the active practice of law for compensation, and
 - a. is or was licensed in the state of Florida and does not maintain a registered law office in Florida; or
 - b. is or was licensed to practice law in any other state or territory of the United States or the District of Columbia, and does not maintain a registered law office therein or in Florida;
- (2) served as a judge in Florida or any other state or territory of the United States or the District of Columbia; or
- (3) is an authorized house counsel certified by the Supreme Court of Florida; or
- (4) is or was a full time law professor employed by an American Bar Association-accredited law school and who;
 - a. for at least ten years before applying to participate in the emeritus program was engaged in one or more of the following: the active practice of law, which includes, but is not limited to private practice, authorized house counsel, or public employment: service as a judge in Florida or any other state or territory of the United States or the District of Columbia; or full time employment as a law professor at or by an American Bar Association-accredited law school;
 - b. was a member in good standing of The Florida Bar or the entity governing the practice of law of any other state, territory, or the District of Columbia and has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past 15 years;
 - c. if not a retired member of The Florida Bar, has not failed The Florida Bar examination 3 or more times;
 - d. agrees to abide by the Rules of Professional Conduct and submit to the jurisdiction of the Supreme Court of Florida for disciplinary purposes;

- e. neither asks for nor receives compensation of any kind for the legal services to be rendered under this rule; and
- f. is certified under rule 12-1.5.

(b) Approved Legal Aid Organization. An "approved legal aid organization" for the purposes of this chapter is a not-for-profit legal aid organization that is approved by the Supreme Court of Florida. A legal aid organization seeking approval must file a petition with the clerk of the Supreme Court of Florida certifying that it is a not-for-profit organization and reciting with specificity:

- (1) the structure of the organization and whether it accepts funds from its clients;
- (2) the major sources of funds used by the organization;
- (3) the criteria used to determine potential clients' eligibility for legal services performed by the organization;
- (4) the types of legal and nonlegal services performed by the organization;
- (5) the names of all members of The Florida Bar who are employed by the organization or who regularly perform legal work for the organization; and
- (6) the existence and extent of malpractice insurance that will cover the emeritus attorney.

(c) Supervising Attorney. A "supervising attorney" as used in this chapter is a member in good standing of The Florida Bar who supervises an emeritus attorney engaged in activities permitted by this chapter. The supervising attorney must:

- (1) be employed by or be a participating volunteer for an approved legal aid organization; and
- (2) assume responsibility, consistent with the requirements of Rule 4-5.1 of the Rules Regulating The Florida Bar for supervising the conduct of the matter, litigation, or administrative proceeding in which the emeritus attorney participates.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014; effective June 1, 2014 (SC12-2234).

RULE 12-1.3 ACTIVITIES

(a) Permissible Activities. An emeritus attorney, in association with an approved legal aid organization and under the supervision of a supervising attorney, may perform the following activities:

- (1) The emeritus attorney may appear and proceed in any court or before any administrative tribunal in this state on behalf of a client of an approved legal aid organization if the person on whose behalf the emeritus attorney is appearing has consented in writing to such appearance and representation and a supervising attorney has given written approval of same. The written consent and approval must be filed in the record of each case and brought to the attention of a judge of the court or the presiding officer of the administrative tribunal.

(2) The emeritus attorney may prepare, sign and file pleadings and other documents to be filed in any court or before any administrative tribunal in this state in any matter in which the emeritus attorney is involved. While not required to sign pleadings, the supervising lawyer's name and Florida Bar number shall be affixed to each pleading or paper filed or served by an emeritus attorney, who shall also identify him or herself as a certified emeritus attorney on such pleading or paper.

(3) The emeritus attorney may engage in such other activities as are necessary for any matter in which the emeritus attorney is involved, including participating in legal clinics sponsored or provided by such emeritus attorney's legal aid organization, or providing advice and assistance to persons, including drafting legal documents, whose legal problems or issues are not subject to litigation.

(b) Determination of Nature of Participation. The presiding judge or hearing officer may, in the judge's or officer's discretion, determine the extent of the emeritus attorney's participation in any proceedings before the court.

Committee Note: This rule recognizes that an emeritus attorney may accept an appointment or assignment from a state or federal judge seeking, through a supervising legal aid organization, pro bono assistance for litigants or persons appearing before such judge, including but not limited to: direct representation; limited representation; or service as either an attorney ad litem or guardian ad litem. However, this rule applies to civil legal assistance and recognizes that emeritus attorneys under this rule are accordingly limited, if not altogether restricted, from providing representation and or legal services in criminal law matters.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

RRTFB – June 1, 2014

RULE 12-1.4 SUPERVISION AND LIMITATIONS

(a) Supervision by Attorney. An emeritus attorney must perform all activities authorized by this chapter under the direct supervision of a supervising attorney.

(b) Representation of Bar Membership Status. Emeritus attorneys permitted to perform services are not, and must not represent themselves to be, active members of The Florida Bar licensed to practice law in this state.

(c) Payment of Expenses and Award of Fees. No emeritus attorney may receive compensation for legal services rendered under the authority of this rule from any source, including but not limited to the legal aid organization with which the attorney is associated, from the emeritus attorney's client, or through a contingent fee agreement. The prohibition against compensation for the emeritus attorney contained in rule 12-1.2(a)(5) will not prevent the approved legal aid organization from reimbursing the emeritus attorney for actual expenses incurred while rendering approved services. It also does not prevent the approved legal aid organization from charging for its services as it may properly charge. The approved legal aid organization will be entitled to receive all court-awarded attorneys' fees that may be awarded for any representation or services rendered by the emeritus attorney.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

RULE 12-1.5 CERTIFICATION

An emeritus attorney seeking to provide pro bono legal services must obtain approval from the Clerk of the Supreme Court of Florida by filing all of the following certificates:

(a) a certificate from an approved legal aid organization stating that the emeritus attorney is currently associated with that legal aid organization and that a Florida Bar member employed by or participating as a volunteer with that organization will assume the required duties of the supervising lawyer;

(b) a certificate from the highest court or agency in any state, territory, or district in which the emeritus attorney has been licensed to practice law, certifying that the emeritus attorney has not been disciplined for professional misconduct by the bar or courts of that jurisdiction within the past 15 years. An authorized house counsel certified by the Supreme Court of Florida under chapter 17 of these rules need not provide this certificate; and

(c) a sworn statement by the emeritus attorney that the emeritus attorney:

(1) has read and will abide by the Rules of Professional conduct as adopted by the Supreme Court of Florida;

(2) submits to the jurisdiction of the Supreme Court of Florida for disciplinary purposes as defined by chapter 3, Rules of Discipline, and by rules 12-1.2(a)(4) and 12-1.7, R. Regulating Fla. Bar; and

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(3) will neither ask for nor receive compensation of any kind for the legal services authorized by this rule.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

RULE 12-1.6 WITHDRAWAL OF CERTIFICATION

(a) Withdrawal of Permission to Perform Services. The emeritus attorney must immediately cease performing legal services if:

(1) the approved legal aid organization files a statement with the Clerk of the Supreme Court of Florida that:

(A) the emeritus attorney has ceased to be associated with the organization. This notice must be filed within 5 days after such association has ceased; or

(B) certification of such attorney is withdrawn. An approved legal aid organization may withdraw certification at any time and it is not necessary that the notice state the cause for such withdrawal.

The legal aid organization must mail a copy of the notice filed with the clerk of the Supreme Court of Florida to the emeritus attorney concerned; or

(2) the Supreme Court of Florida, in its discretion, at any time, revokes permission for the emeritus attorney to perform pro bono services. The Clerk of the Supreme Court of Florida must mail a copy of the statement to the emeritus attorney and the approved legal aid organization.

(3) The Florida Bar files a statement with the Supreme Court of Florida that the individual is no longer an authorized house counsel. The Florida Bar must mail a copy of the statement to the emeritus attorney involved.

(b) Notice of Withdrawal. If an emeritus attorney's certification is withdrawn for any reason, the supervising attorney must immediately file a notice of the withdrawal in the official file of each matter pending before any court or tribunal in which the emeritus attorney was involved.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

RULE 12-1.7 DISCIPLINE

The Supreme Court of Florida may impose appropriate proceedings and discipline under the Rules of Discipline or the Rules of Professional Conduct. In addition, the Supreme Court of Florida or the approved legal aid organization may, with or without cause, withdraw certification and the presiding judge or hearing officer for any matter in which the emeritus attorney has participated may hold the emeritus attorney in civil contempt for any failure to abide by the

tribunal's orders.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

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FORM _____: PETITION AND RULE 12-1.5 CERTIFICATION

An emeritus attorney seeking to provide pro bono legal services must obtain approval from the Clerk of the Supreme Court of Florida by filing a sworn petition in substantially the following form:

PETITION AND RULE 12-1.5 CERTIFICATION

The undersigned seeks permission to serve as an Emeritus Attorney, pursuant to Chapter 12 of the Rules Regulating the Florida Bar and, in support thereof, states under oath:

1. I am eligible for Emeritus Attorney status as defined in Rule 12-1.2 of the Rules Regulating the Florida Bar.
2. (a) I was a member in good standing of The Florida Bar or the entity governing the practice of law of any other state, territory, or the District of Columbia and have not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past 15 years

or

(b) I am still licensed as an attorney in the state(s), territory(ies) or district(s) of _____, but do not maintain a registered law office address within that/those jurisdiction(s) and am in good standing in such.
3. I have not failed The Florida Bar examination 3 or more times.
4. I agree to abide by the Rules of Professional Conduct and submit to the jurisdiction of the Supreme Court of Florida for disciplinary purposes as defined by chapter 3, Rules of Discipline, and by rules 12-1.2(a)(4) and 12-1.7, R. Regulating Fla. Bar.
5. I have read, taken, and agree to abide by the terms of the Oath of the Florida Bar when assisting or providing pro bono legal advice and services in the State of Florida as an Emeritus Attorney.

6. I promise that I will not personally request or accept a fee for legal services in connection with providing pro bono legal advice and services as an Emeritus Attorney.
7. Attached hereto as Exhibit A is a certificate from an approved legal aid organization stating that I am currently associated with that legal aid organization and that a Florida Bar member employed by or participating as a volunteer with that organization will assume the required duties of being my supervising lawyer.
8. Attached hereto as Exhibit B is a certificate from the highest court or agency in any state, territory, or district in which I have been licensed to practice law, certifying that I have not been disciplined for professional misconduct by the bar or courts of that jurisdiction within the past 15 years. (An authorized house counsel certified by the Supreme Court of Florida under chapter 17 of these rules need not provide this certificate).

Under penalty of perjury, I swear or affirm that the foregoing is true and correct to the best of my personal knowledge and belief.

FURTHER AFFIANT SAYETH NAUGHT.

s/ _____

STATE OF FLORIDA
COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this ____ day of _____,
20__ by _____ who is personally known to me or produced _____
as identification.

Notary Public
Commission Number:

CHAPTER 12. EMERITUS ATTORNEYS PRO BONO PARTICIPATION PROGRAM
12-1. GENERALLY
RULE 12-1.1 PURPOSE

Individuals admitted to the practice of law in Florida have a responsibility to provide competent legal services for all persons, including those unable to pay for such services. As one means of meeting these legal needs, the following rules establishing the emeritus attorneys pro bono participation program are adopted.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 12-1.2 DEFINITIONS

(a) Emeritus Attorney. An "emeritus attorney" is any person, who

(1) is either inactive or retired from the active practice of law for compensation, and

a. is or was licensed in the state of Florida and does not maintain a registered law office in Florida, or

b. is or was licensed to practice law in any other state or territory of the United States or the District of Columbia, and does not maintain a registered law office therein or in Florida;

(2) served as a judge in Florida or any other state or territory of the United States or the District of Columbia;

(3) is an authorized house counsel certified by the Supreme Court of Florida, or,

(4) is or was a full time law professor employed by an American Bar Association-accredited law school and who;

(a) —

a. for at least ten years before applying to participate in the emeritus program was engaged in one or more of the following: the active practice of law, which includes, but is not limited to private practice, authorized house counsel, or public employment; service as a judge in Florida or any other state or territory of the United States or the District of Columbia; or full time employment as a law professor at or by an American Bar Association-accredited law school;

b. was a member in good standing of The Florida Bar or the entity governing the practice of law of any other state, territory, or the District of Columbia and has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past 15 years;

(1) if not a retired member of The Florida Bar, has not failed The Florida Bar examination 3 or more times;

c. _____

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d. ~~_____ agrees to abide by the Rules of Professional Conduct and submit to the jurisdiction of the Supreme Court of Florida for disciplinary purposes;~~

e. ~~_____ neither asks for nor receives compensation of any kind for the legal services to be rendered under this rule; and~~

~~_____ is certified under rule 12-1.5,~~

~~(2) _____ for a minimum of 10 out of the 15 years immediately preceding the application to participate in the emeritus program, except that this requirement does not apply to authorized house counsel certified under chapter 17 of these rules;~~

~~(3) _____ was a member in good standing of The Florida Bar or the entity governing the practice of law of any other state, territory, or the District of Columbia and has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past 15 years;~~

~~(4) _____ if not a retired member of The Florida Bar, has not failed the Florida bar examination 3 or more times;~~

~~(5) _____ agrees to abide by the Rules of Professional Conduct and submit to the jurisdiction of the Supreme Court of Florida for disciplinary purposes;~~

~~(6) _____ neither asks for nor receives compensation of any kind for the legal services to be rendered under this rule; and~~

~~f. _____~~
~~(7)(1) _____ is certified under rule 12-1.5,~~

(b) Approved Legal Aid Organization. An "approved legal aid organization" for the purposes of this chapter is a not-for-profit legal aid organization that is approved by the Supreme Court of Florida. A legal aid organization seeking approval must file a petition with the clerk of the Supreme Court of Florida certifying that it is a not-for-profit organization and reciting with specificity:

- (1) the structure of the organization and whether it accepts funds from its clients;
- (2) the major sources of funds used by the organization;
- (3) the criteria used to determine potential clients' eligibility for legal services performed by the organization;
- (4) the types of legal and nonlegal services performed by the organization;
- (5) the names of all members of The Florida Bar who are employed by the organization or who regularly perform legal work for the organization; and
- (6) the existence and extent of malpractice insurance that will cover the emeritus attorney.

(c) Supervising Attorney. A "supervising attorney" as used in this chapter is a member in good standing of The Florida Bar who ~~directs and~~ supervises an emeritus attorney engaged in activities permitted by this chapter. The supervising attorney must:

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and

- (1) be employed by or be a participating volunteer for an approved legal aid organization;
and

- (2) assume ~~personal professional~~ responsibility, consistent with the requirements of Rule 4-5.1 of the Rules Regulating The Florida Bar, for supervising the conduct of the matter, litigation, or administrative proceeding in which the emeritus attorney participates.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014; effective June 1, 2014 (SC12-2234).

RULE 12-1.3 ACTIVITIES

(a) Permissible Activities. An emeritus attorney, in association with an approved legal aid organization and under the supervision of a supervising attorney, may perform the following activities:

- (1) The emeritus attorney may appear ~~and proceed~~ in any court or before any administrative tribunal in this state on behalf of a client of an approved legal aid organization if the person on whose behalf the emeritus attorney is appearing has consented in writing to ~~such that~~ appearance and ~~representation and~~ a supervising attorney has given written approval ~~of same, for that appearance.~~ The written consent and approval must be filed in the record of each case and brought to the attention of a judge of the court or the presiding officer of the administrative tribunal.

- (2) The emeritus attorney may prepare, ~~sign and file~~ pleadings and other documents to be filed in any court or before any administrative tribunal in this state in any matter in which the emeritus attorney is involved. ~~While not required to sign pleadings, the supervising lawyer's name and Florida Bar number shall be affixed to each pleading or paper filed or served by an emeritus attorney, who shall also identify him or herself as a certified emeritus attorney on such pleading or paper, must sign all documents filed with the court.~~

- (3) The emeritus attorney may engage in such other ~~preparatory~~ activities as are necessary for any matter in which the emeritus attorney is involved, ~~including participating in legal clinics sponsored or provided by such emeritus attorney's legal aid organization, or providing advice and assistance to persons, including drafting legal documents, whose legal problems or issues are not subject to litigation.~~

(b) Determination of Nature of Participation. The presiding judge or hearing officer may, in the judge's or officer's discretion, determine the extent of the emeritus attorney's participation in any proceedings before the court.

Committee Note: This rule recognizes that an emeritus attorney may accept an appointment or assignment from a state or federal judge seeking, through a supervising legal aid organization, pro bono assistance for litigants or persons appearing before such judge, including but not limited to: direct representation; limited representation; or service as either an attorney ad litem or guardian ad litem. However, this rule applies to civil legal assistance and recognizes that emeritus attorneys under this rule are accordingly limited, if not altogether restricted, from providing representation and or legal services in criminal law matters.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

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RRTFB – June 1, 2014

RULE 12-1.4 SUPERVISION AND LIMITATIONS

(a) **Supervision by Attorney.** An emeritus attorney must perform all activities authorized by this chapter under the direct supervision of a supervising attorney.

(b) **Representation of Bar Membership Status.** Emeritus attorneys permitted to perform services are not, and must not represent themselves to be, active members of The Florida Bar licensed to practice law in this state.

(c) **Payment of Expenses and Award of Fees.** No emeritus attorney may receive compensation for legal services rendered under the authority of this rule from any source, including but not limited to the legal aid organization with which the attorney is associated, from the emeritus attorney's client, or through a contingent fee agreement. The prohibition against compensation for the emeritus attorney contained in rule 12-1.2(a)(5) will not prevent the approved legal aid organization from reimbursing the emeritus attorney for actual expenses incurred while rendering approved services. It also does not prevent the approved legal aid organization from charging for its services as it may properly charge. The approved legal aid organization will be entitled to receive all court-awarded attorneys' fees that may be awarded for any representation or services rendered by the emeritus attorney.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

RULE 12-1.5 CERTIFICATION

An emeritus attorney seeking to provide pro bono legal services must obtain approval from the Clerk of the Supreme Court of Florida by filing all of the following certificates:

(a) a certificate from an approved legal aid organization stating that the emeritus attorney is currently associated with that legal aid organization and that a Florida Bar member employed by or participating as a volunteer with that organization will assume the required duties of the supervising lawyer;

(b) a certificate from the highest court or agency in any state, territory, or district in which the emeritus attorney has been licensed to practice law, certifying that the emeritus attorney has ~~fulfilled the requirements of active bar membership and has~~ not been disciplined for professional misconduct by the bar or courts of that jurisdiction within the past 15 years. An authorized house counsel certified by the Supreme Court of Florida under chapter 17 of these rules need not provide this certificate; and

(c) a sworn statement by the emeritus attorney that the emeritus attorney:

(1) has read and will abide by the Rules of Professional conduct as adopted by the Supreme Court of Florida;

(2) submits to the jurisdiction of the Supreme Court of Florida for disciplinary purposes as defined by chapter 3, Rules of Discipline, and by rules 12-1.2(a)(4) and 12-1.7, R. Regulating Fla. Bar; and

RRTFB – June 1, 2014

(3) will neither ask for nor receive compensation of any kind for the legal services authorized by this rule.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

RULE 12-1.6 WITHDRAWAL OF CERTIFICATION

(a) Withdrawal of Permission to Perform Services. The emeritus attorney must immediately cease performing legal services if:

(1) the approved legal aid organization files a statement with the Clerk of the Supreme Court of Florida that:

(A) the emeritus attorney has ceased to be associated with the organization. This notice must be filed within 5 days after such association has ceased; or

(B) certification of such attorney is withdrawn. An approved legal aid organization may withdraw certification at any time and it is not necessary that the notice state the cause for such withdrawal.

The legal aid organization must mail a copy of the notice filed with the clerk of the Supreme Court of Florida to the emeritus attorney concerned; or

(2) the Supreme Court of Florida, in its discretion, at any time, revokes permission for the emeritus attorney to perform pro bono services. The Clerk of the Supreme Court of Florida must mail a copy of the statement to the emeritus attorney and the approved legal aid organization.

(3) The Florida Bar files a statement with the Supreme Court of Florida that the individual is no longer an authorized house counsel. The Florida Bar must mail a copy of the statement to the emeritus attorney involved.

(b) Notice of Withdrawal. If an emeritus attorney's certification is withdrawn for any reason, the supervising attorney must immediately file a notice of the withdrawal in the official file of each matter pending before any court or tribunal in which the emeritus attorney was involved.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

RULE 12-1.7 DISCIPLINE

The Supreme Court of Florida may impose appropriate proceedings and discipline under the Rules of Discipline or the Rules of Professional Conduct. In addition, the Supreme Court of Florida or the approved legal aid organization may, with or without cause, withdraw certification and the presiding judge or hearing officer for any matter in which the emeritus attorney has participated may hold the emeritus attorney in civil contempt for any failure to abide by the

tribunal's orders.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

RRTFB – June 1, 2014

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SUBCOMMITTEE INTERIM REPORT TO THE **COMMISSION**

Subcommittee:	Continuum of Services
Date:	September 18, 2015
Prepared By:	Nikki Ann Clark

The Continuum of Services Subcommittee met four times subsequent to the last Commission meeting in May. The Subcommittee met on July 7th, July 23rd, August 11th, and August 24th. The meetings focused on further developing the index of available resources that was initiated prior to the Commission meeting and studying potential tools for making those resources available to persons with civil legal needs.

At the outset of its summer meetings, the Subcommittee had discussions regarding the recurring issue of unlicensed practice of law. Unlicensed practice of law seems to be a prevalent issue when considering access to civil justice. On this point, the Subcommittee noted the need for increased training of non-lawyers, especially Clerks of Court, with respect to the parameters of unlicensed practice. It was suggested that one consideration is the potential for the Supreme Court of Florida to amend the rules of unlicensed practice with an aim to increase access to civil justice. Also discussed by the Subcommittee was the possibility of training and education by The Florida Bar's Unlicensed Practice of Law Department.

The Subcommittee also discussed at length the possibility of creating a "civil legal assistant" classification. This type of non-lawyer classification has been created in

some jurisdictions by legislation and in others by court order. Persons in the non-lawyer “civil legal assistant” classification would provide services to persons attempting to assess their civil legal issues. These services would include assistance with the preparation and filing of forms.

Also discussed was Rule 12, Rules Regulating the Florida Bar. This is the emeritus attorneys rule and it generally seeks to provide pro bono participation by retired lawyers in representing those unable to pay for legal services. The Subcommittee generally discussed possible expansion of the rule to allow greater participation by retired lawyers in representing those seeking access to civil justice.

The Subcommittee indicated a desire to get further information regarding the Access Subcommittee’s proposed Gateway system. At least one member of the Subcommittee expressed concern about how the proposed system would be funded. In response, the Subcommittee received a report from staff about the status of the proposed system. Further, Access Chair William Van Nortwick graciously gave the Subcommittee a full briefing on the status and progress of the Gateway system. Mr. Van Nortwick advised that the Access Subcommittee has met with professionals about creating a software design for the system. The Florida system will be modeled after a system currently being used in New Mexico but the Florida system will be much larger and more complex. The Florida system would be initiated with a pilot project in a smaller, rural county, possibly Clay County. The system will be designed to triage the user’s case and steer them to the best available resources. Importantly, the system has mechanisms to address language and literacy issues which are of primary concern to the Continuum Subcommittee. The Subcommittee greatly appreciates Mr. Van Nortwick’s consideration in briefing the Subcommittee on this issue.

Critical to the work of the Subcommittee, the Subcommittee’s Resources sub-group advised that it has drafted a report that makes two proposals. The sub-group advised that the proposals could be submitted, if approved by the Subcommittee, to the full Commission. One member of the sub-group outlined the report for the Subcommittee. The report’s first proposal is a database of resources that could potentially be maintained in a “wiki-style” manner, allowing for editing as needed. The report suggests that the database be maintained by The Florida Justice Technology Center. The report contains an initial listing of

available resources that would be included in the data base, a list which is certainly not exhaustive. This index builds on the initial listing submitted to the Commission at the May 15, 2015 meeting. One member advised that a list of law libraries available in each of Florida's 67 counties could be compiled and added to the index of resources. The Subcommittee agreed that the list should be added to the final report's list of resources.

Additionally, the report's second proposal calls for the Commission to adopt several other **goals** for increasing access to civil justice:

- 1.) Increasing the number of lawyers available to provide representation;
- 2.) Assisting Clerks of Court by providing clarity about the parameters of assisting persons who seek information about legal services;
- 3.) Creation of a "Navigator" system where trained non-lawyer experts could assist the public in directing them to available resources;
- 4.) Creating a class of civil legal assistants that can assist the public with preparation and filing of forms; and
- 5.) Adequately funding legal services programs statewide to establish more lawyer positions to both provide needed legal services and to provide necessary oversight of civil legal assistants.

At its ultimate meeting of the summer, the Subcommittee discussed the Resources sub-group report in depth, agreeing to add language about the accessibility of forms and the list of law libraries by county. After consideration, the Subcommittee feels compelled to acknowledge the inability to list every currently available resource. The Subcommittee unanimously voted to send the proposals to the Commission for adoption by the Commission at-large. The report of the Resources sub-group is attached hereto.

Report of the Committee on Continuum of Services – Resources Sub-sub Committee August 25, 2015 (revised)

Resource Listing

Background

The Sub-sub Committee on Resources has worked extensively on compiling a list of available legal resources. See “Attachment A.” This Committee has also analyzed how the issue of public and legal access to legal and other relevant local, state, and national resources is central to the overall issue of access to civil legal services.

While it is possible to list and describe the types of resources available and offer examples of what some jurisdictions or organizations are doing to meet a portion of the need for legal access, the limited time that restricts this committee prevents an on-going compilation and updating of such a resource directory. Moreover, there is a host of other resources, such as those related to economic security and advocacy, which may not be seen as directly relating to specific legal matters, but which our committee recommends be included. A state-wide resource guide can provide invaluable information and assistance to the public to address not only a legal matter and related problem(s) but also to find relevant legal forms. These are also important resources to have available to the Bar and to the public in a central location.

We are aware that both our time as a committee is limited and the Commission itself is moving quickly to come up with tangible long and short-term solutions to how our civil legal system can provide better access to the public. Therefore, we recommend that the Committee on the Continuum of Services adopt and propose to the full Commission the creation of the Florida Civil Legal Resources Access Site. This site would be a robust and dedicated on-line site that would list local, state and national resources for the public to turn to learn about what is available to assist them in efforts to access the courts and or other public resources as they confront a legal matter or related issue/problem.

This resource listing is fundamental to the operation of the Access Portal concept approved by the Commission at its May 2015 meeting.

What needs to be done:

- A protocol for the collection and dissemination of resources should be developed based on the initial work of the Committee. (Attached.)
- A central authority should be tasked with the regular maintenance and the updating of resource information beyond this initial effort.
- Technology, specific innovations, and advanced programs and projects in some jurisdictions should be regularly researched and added to the Florida Civil Legal Resources Access Site by the central staff tasked with Resource site maintenance.
- Contributions and suggestions should be sought and welcomed from all members of the Commission, professionals, the legal community, and any others who could send information to the central organizer for vetting and posting in a “wiki” format.

Proposal 1 for a Motion to the Committee/Full Commission

The Florida Commission on Access to Civil Justice should 1) create the Florida Civil Legal Resources Access Site, beginning with the work already done by the Committee on the Continuum of Services; 2) That the Florida Bar Foundation be tasked with the maintenance and updating of the resources web site; 3) and that the web administrator set up the page to allow a “wiki” style format so additional resources can be entered by the public as suggested above.

Proposal 2 for a Motion to the Committee/Full Commission

The Florida Commission on Access to Civil Justice should specifically include and further explore these five key strategies to bringing together greater access to civil justice. They are:

1. Developing and outlining specific strategies to increase the number of **attorneys** to assist the public. (Example: emeritus rules, reexamination and expansion of the current rules regarding UPL.)
2. Helping **Clerks of Court** to have clarity and, if necessary, broader authority to assist people who seek information about accessing relief in the civil courts.
3. Creating a “**Navigator**” system where trained experts could work with the public to help direct them to resources. Navigators could assist with access through the Portals or outside of them.
4. Creating a designated class of “**Civil Legal Assistants**”. California, for instance, enacted legislation creating a category of professionals called, Legal Document Assistants, (LDA), who assist with the preparation of legal forms to address the growing needs of citizens unable to secure an attorney but who nevertheless need help filing the proper legal pleadings/forms with the courts. LDA’s are not allowed to give legal advice, and must be registered and bonded. Under California law, LDA’s are NOT paralegals, as paralegals must work under the direct supervision of a licensed attorney within the scope of that employment. Information about California's Legal Document Assistants (LDA) has been added under the Legal Technician / Limited Officers/ Court navigators section of the ATJ Knowledge Base web site. See, “*Attachment B*” for more information.
5. **Funding Legal Services** programs statewide to establish more attorney positions to both provide needed legal services and to provide necessary oversight of Civil Legal Assistants.

ATTACHMENT "A" TO 8/11/15 SUB Sub-COMMITTEE REPORT:

RECOMMENDATION OF WEB CITES TO BE LISTED ON A STATE - WIDE

"RESOURCES TO ACCESS TO CIVIL JUSTICE" PAGE

The Florida Bar Foundation: <http://flabarfndn.org/>

List of Legal Service Providers Around the State (Updated as of 8/1/15):
<http://flabarfndn.org/grant-programs/grantees/>

The Florida Bar Referral Service:

The Florida Bar currently operates a referral services in 47 Florida counties. The remaining counties are served by local bar association referral service. Attorney members pay an annual fee of \$125 to participate in the service. Participating lawyers agree to provide an initial consultation for \$25. Local bar associations can charge up to \$50 for the initial consultation. The consultation lasts 30 minutes. If the lawyer takes on the case, they make the financial arrangements with the client. If the lawyer receives any fees as a result of the referral, the lawyer is obligated to remit 12% of the fee to the Bar. The Bar Referral Service also has two specialty panels, the Low Fee panel and the Elderly Law panel, attorneys listed on these panels agree to provide a free 30 minute consultation. Thereafter, if the attorney takes the case, the Bar suggests that the member charge a fee lower than their usual fee such as ½ the usual fee. Lawyers on the two specialty panels are not obligated to remit the 12% fee. 681 Florida lawyers are on the Bar's referral service. On the Low Fee panel, there are 1,426 lawyers registered and 1,352 lawyers on the Elderly Law panel. One consideration is to encourage attorneys to join the low fee panel by reducing or eliminating the membership fee, but then requiring the panel members to charge a truly low fee for assistance, not the vague suggestion of one-half their usual fee.

Public Libraries Around the State:

Legal Self Help Centers are being introduced in public libraries all over the country. These are technology based kiosks that are being placed in the libraries and then librarians staff the kiosks. Training is offered to the public librarians by law librarians and lawyers on the resources that are available at the kiosks. The resources include forms, legal research methods, self help tips and lawyer referral information.

County Law Libraries:

Attachment “C” is a current list of County Law Libraries in Florida staff by librarians able to assist patrons with research and legal information.

Ask-A-Lawyer Proposal:

Currently throughout Florida, public libraries offer a program called Ask-A-Librarian. The program allows Florida residents to access reference services through live chat and text messaging from 10 a.m. to midnight Sunday through Thursday and from 10:00 a.m. to 5 p.m. Friday and Saturday. E-mail is available 24 hours a day, seven days of week, but is answered by the user’s local library. The service has live chat features to statewide library patrons and local patrons and text messaging to statewide patrons. Typically, two to five librarians are available during the live chat hours to answer questions. The State Library of Florida can assist in making connections with the Tampa Library Consortium who administers the program for an “Ask-A- Lawyer” component of the program.

The Florida Courts Website:

<http://www.flcourts.org/resources-and-services/family-courts/family-law-self-help-information/> has an array of self help forms and instructions for matters ranging from adoption and name changes to probate and small claims. These resources are mandated by the Florida Supreme Court, vary county by county and can be run by the courts or by the counties.

Veteran Assistance: Statewide:

www.statesidelegal.org

Domestic Violence Issues: The Domestic Violence Legal Statewide Hotline for victims of domestic violence. 1-800-500-1119 Ext. 3.

National Center for Full Faith and Credit:

www.fullfaithandcredit.org

Florida Law Help

<http://www.floridalawhelp.org> A resources for low income Floridians. Assists with interstate enforcement of domestic violence protection orders and child custody matters. Most of the resources are available in Spanish and some are available in Creole.

Disability Rights Florida:

www.disabilityrightsflorida.org

A website and program open to any Floridian with a disability related issue. An individual can apply for services either online or by phone.

Senior Citizen Issues: A Senior Legal Helpline for Florida residents age 60 and**Older:**

The Senior Legal Helpline provides free legal advice and brief services by telephone to eligible Florida residents age 60 and older, for civil (not criminal) legal problems. The Senior Legal Helpline – **1-888-895-7873** – also provides solutions to seniors to help them resolve their legal problems, makes referrals to state and local regulatory agencies and, when it is determined that court representation is necessary, helps seniors find legal providers in their communities.

Medicaid/Medicare Prescription Drug Issues:**Prescription Drug Helpline**

The Prescription Drug Helpline provides assistance to Medicaid and Medicare beneficiaries whose necessary medications have been denied. 1-800-436-6001

Immigration Issues:

www.immigrationlawhelp.org

A website to help those who need assistance with and information with immigration issues.

Asista: Civil legal assistance for immigrant victims of gender violence:

www.asistahelp.org:

WomensLaw.org

<http://www.womenslaw.org/>

WomensLaw.org is a national website that provides state specific information for survivors of domestic violence.

Spirit Project: <http://www.thespiritproject.com>

SPIRIT stands for Suppression-Prevention-Intervention-Referral-Intelligence Tool.

The **SPIRIT Project** is currently compiling a resources directory, and connecting those known resources with various stake holders, including the court system. The program is HIPPA, COPPA and FERPA compliant. The ultimate goal is to have a resources data base that is state-wide, but for right now, the data base currently being compiled will list resources available in Tallahassee and Orlando.

“Attachment B”

California enacted the Legal Document Assistants (LDA) on September 30, 1998 when Governor Pete Wilson signed California State Senate Bill SB1418, regulating the legal document preparation profession in the State of California, and creating a new formal title, Legal Document Assistant. ^{California State Senate Bill SB1418}

While many LDAs have paralegal education and experience, in California they are not the same as paralegals. Under California law, a paralegal is prohibited from providing services directly to the consumer. Paralegals may only be employed by an attorney, law firm, corporation, governmental agency, or other entity; and work under the direct supervision of a licensed attorney within the scope of that employment. ^[California Business and Professions Code, Sections 6450-6456; American Bar Association Standing Committee on Paralegals]

Unlike paralegals, LDAs are authorized by law to provide legal document preparation services to consumers, after complying with the registration and bonding requirements. Neither paralegals nor LDAs are permitted to engage in the practice of law.

LDAs are not lawyers and do not offer legal advice, discuss legal strategies, answer questions of a legal nature, select forms for the consumer, or appear in court on the consumer's behalf. They are professionals, qualified through education, training or work experience, authorized to assist consumers representing themselves in legal matters by preparing and processing the necessary legal documents.

A Legal Document Assistant, as defined by the California Business & Professions Code (Section 6400 (c)) is: "Any person who is otherwise not exempted and who provides, or assists in providing, or offers to provide, or offers to assist in providing, for compensation, any self-help service to a member of the public who is representing himself or herself in a legal matter, or who holds himself or herself out as someone who offers that service or has that authority, or a corporation, partnership, association, or other entity that employs or contracts with any person who is not otherwise exempted who, as part of his or her responsibilities, provides, or assists in providing, or offers to provide, or offers to assist in providing, for compensation, any self-help service to a member of the public who is representing himself or herself in a legal matter or holds himself or herself out as someone who offers that service or has that authority."

See also, an excellent article exploring alternate approaches to access the courts, **Pro Se Litigation in Times of Financial Hardship - A Legal Crises and Its Solutions**, published by the American Bar Association, written by Richard Painter of the University of Minnesota Law School. Pages 51-57 explore the pro's and con's of specific alternate approaches to assist citizens gain access to courts when obtaining an attorney is not possible. This article has been placed on the ATJ Knowledge Base web site under this Subcommittee's section.

	Attachment C: Florida Counties/Circuits' Law Libraries			
	COUNTY	LIBRARY	FLORIDA'S JUDICIAL CIRCUIT	PHONE (Library or Clerk of Court's Office)
1	Alachua	John A.H. Murphree Law Library	8	352-334-3900
2	Baker	John A.H. Murphree Law Library	8	352-334-3900
3	Bay	Bay County Law Library	14	850-522-2121
4	Bradford	John A.H. Murphree Law Library	8	352-334-3900
5	Brevard	A. Max Brewer Memorial Law Library	18	321-617-7295
6	Broward	The Lamar Warren Law Library of Broward County	17	954 831 6226
7	Calhoun	No Law Library	14	850- 674-4545
8	Charlotte	No Law Library	20	941- 637-2281
9	Citrus	Wallace E. Sturgis, Jr. Memorial Law Library	5	352-401-7841
10	Clay	No Law Library	4	904-269-6302
11	Collier	No Law Library	20	239 252-8800
12	Columbia	Dissolved	3	386 758-1041
13	DeSoto	Hernando Branch of the Public Library	12	662-429-4439
14	Dixie	John A.H. Murphree Law Library	8	352-498-1219
15	Duval	Duval County Law Library	4	904-255-1150
16	Escambia	Ernest E. Mason Law Library (Escambia County LL)	1	850 595-4468
17	Flagler	Bunnell Branch of the Public Library	7	386-446-6763
18	Franklin	No Law Library	2	850-653-8861
19	Gadsden	No Law Library	2	850-6627-7106
20	Gilchrist	John A.H. Murphree Law Library	8	352-334-3900
21	Glades	Judge Lynn Gerald Law Library	20	239-533-9195
22	Gulf	No Law Library	14	850-229-6112
23	Hamilton	No Law Library	3	386-792-1288

	COUNTY	LIBRARY	FLORIDA'S JUDICIAL CIRCUIT	PHONE (Library or Clerk of Court's Office)
24	Hardee	Small collection of law books on the 3rd fl. of Courthouse; no staff	10	863-773-6547
25	Hendry	Judge Lynn Gerald Law Library	20	239-533-9195
26	Hernando	Wallace E. Sturgis, Jr. Memorial Law Library	5	352-401-7841
27	Highlands	Parker Lee McDonald Law Library (Highlands County Law Library)	10	863-402-6745
28	Hillsborough	James J. Lunsford Law Library (Hillsborough County Law Library)	13	813-272-5818
29	Holmes	No Law Library	14	850- 547-1100
30	Indian River	No Law Library	19	772-770-5185
31	Jackson	No Law Library	14	850-482-9124
32	Jefferson	R.J. Bailar Public Library)	2	850- 342-0205
33	Lafayette	No Law Library	3	381-294-4231
34	Lake	No Law Library	5	352-742-4110
35	Lee	Judge Lynn Gerald Law Library (Lee County Law Library)	20	239-533-9195
36	Leon	No Law Library- (Florida Supreme Court)	2	
37	Levy	John A.H. Murphree Law Library	8	352-486-5266 x 336
38	Liberty	No Law Library	2	850-643-2215
39	Madison	No Law Library	3	850-973-1500
40	Manatee	Manatee County Law Library	12	941-741-4090
41	Marion	Marion County Law Library	5	503-588-5090
42	Martin	Martin County Public Library - Stuart branch	19	772-221-1427

	COUNTY	LIBRARY	FLORIDA'S JUDICIAL CIRCUIT	PHONE (Library or Clerk of Court's Office)
43	Miami-Dade	Miami-Dade County Law Library	11	305-349-7548
44	Monroe	No Law Library	16	305-294-4641
45	Nassau	Nassau County Law Library	4	904-548-4909
46	Okaloosa	Okaloosa County Law Library	1	850 651-7256
47	Okeechobee	No Law Library	19	863-763-2131
48	Orange	FL A&M Univ. College of Law	9	407-254-3263
49	Osceola	Osceola Public Library - Kissimmee Branch	9	407-935-0777
50	Palm Beach	Palm Beach County Law Library	15	561-355-2928
51	Pasco	Pasco County Law Library	6	727-847-8154
52	Pinellas	Pinellas County Law Library	6	727-464-3411
53	Polk	Polk County Law Library	10	863-534-4016
54	Putnam	No Law Library	7	386-329-0361
55	Santa Rosa	Ernest E. Mason Law Library (Escambia County LL)	1	850-981-5593
56	Sarasota	Sarasota County Law Library	12	941-861-8191
57	Seminole	Seminole County Law Library	18	407-665-4578
58	St. Johns	St. Johns Public Library - St. Augustine Branch	7	904-829-5617
59	St. Lucie	Rupert J. Smith Law Library	19	772-462-2370
60	Sumter	No Law Library	5	352-793-0211
61	Suwannee	No Law Library	3	386-362-0536
62	Taylor	No Law Library	3	850-838-3506
63	Union	No Law Library	8	386-496-3711
64	Volusia	Volusia County Law Library	7	386 257-6041
65	Wakulla	No Law Library	2	850-926-0943
66	Walton	No Law Library	1	850-892-8115
67	Washington	No Law Library	14	850-638-6289
	Total County Law libraries :	30 44% pf Counties have law libraries		



SUBCOMMITTEE INTERIM REPORT TO THE COMMISSION

Subcommittee:	Technology Subcommittee Submission for the Interim Report
Date:	August 28, 2015
Prepared By:	Judge Robert Hilliard, Subcommittee Chair

Technology Subcommittee Charge

Examine ways to leverage technology in expanding access to civil justice for disadvantaged, low income, and moderate income Floridians.

Technology Subcommittee Membership

Subcommittee Members (Commission members)

Judge Robert Hilliard, Subcommittee Chair – Milton, Florida
 Gregory Coleman, President of The Florida Bar – West Palm Beach, Florida Clerk
 Linda Doggett – Ft Myers, Florida
 Thomas Edwards – Jacksonville, Florida
 Ben Gibson – Tallahassee, Florida

Subcommittee Members (Ad Hoc)

Judge Ross Goodman – Pensacola, Florida
 Mac McCoy – Tampa, Florida
 James Haggard – Rockledge, Florida

Technology Subcommittee Support Staff

Terry Hill, The Florida Bar – Tallahassee, Florida

Jenna Rogers, Office of the State Courts Administrator – Tallahassee, Florida

Scott Higgins, Office of the State Courts Administrator – Tallahassee, Florida

Melissa Pershing Moss, The Florida Bar Foundation – Maitland, Florida

Chuck Hays, The Florida Bar Foundation – Maitland, Florida

March 11, 2015 Technology Subcommittee Meeting Summary

- Review the charge of the Subcommittee and the makeup of the group
- General discussion of technology in the legal profession
 - as it relates to law offices
 - as it relates to the courts
 - as it relates to the public and self-represented litigants
- Overview of the A2J Author software and forms, the Judicial Management Council access workgroup, and the DIY (Do it Yourself) Florida forms project.
- Open brainstorming session and discussion on expanding access using technology.

April 14, 2015 Technology Subcommittee Meeting Summary

- Introduction to the newly created Technology Resource Guide
- Introduction to the statewide Technology Center
- Expanded DIY Florida self-represented litigant forms project discussion
- Discussion of a proposed national Tech Tour of technology-related access projects
- Discussion on the expansion of access to justice to low and moderate income Floridians.

May 4, 2015 Tech Tour webinar of Access-Related Projects

At the request of the Technology Subcommittee and under the direction and assistance of Joyce Raby and Jimmy Midyette, The Florida Bar Foundation recorded four demonstrations of access to justice technologies that have been developed, are in-use, and for the most part, are available for substantial replication in Florida. The fourth recording was recorded during a live online tour and demonstration to the Technology Subcommittee. The links to these recordings are shared below and these recordings are between 17 and 43 minutes in duration.

Recorded Demo #1

Massachusetts Legal Services - Legal Resource Finder: a very basic online intake/triage system targeted to the public.

Featuring: Rochelle Hahn: Director, Massachusetts Law Reform Institute, Inc.

Click on the link for the recorded demo (about 17 minutes): <https://vimeo.com/125840683>

Password: ATJ2015

Recorded Demo #2

Idaho Legal Aid Services - Virtual Law Office (Clio): an attorney/client communication and service support system

Featuring: Steven J. Rapp: Technology Project Developer, Idaho Legal Aid Services, Inc.

Click on link for the recorded demo (about 27 minutes): <https://vimeo.com/126381034>

Password: ATJ2015

Recorded Demo #3

Arkansas Legal Services Partnership - Automated Forms and Intake/Triage

Featuring: Vince Morris, Director and Victor Richardson, Associate Director, Arkansas Legal Services Partnership

Click on link for the recorded demo (about 30 minutes): <https://vimeo.com/126420707>

Password: ATJ2015

Recorded Demo #4

CARPLS - Knowledge Management System

Featuring: Al Schwartz, Executive Director, CARPLS

Click on link for the recorded demo (about 43 minutes): <https://vimeo.com/126829492>

Password: ATJ2015

May 5, 2015 Technology Subcommittee Meeting Summary

- Summary and discussion of the Tech Tour videos and live webinar
- Introduction to the ATJ searchable knowledge base
- Other access-related initiatives utilizing technology
- Substance and form of the first subcommittee report

August 21, 2015 Technology Subcommittee Meeting Summary

- Presentation of a 50 State Incentive Pro Bono Website project
 - Update on the Florida Justice Technology Center created by the Foundation
 - Presentation on the “gateway online triage system”
 - Brief report on the National Center for State Courts’ requirements for an online legal solution system
 - Introductory discussion of a potential statewide lawyer referral service program
 - Discussion of the Technology Subcommittee’s portion of the Commission interim report
-

Judicial Management Council, JMC Access Workgroup, and DIY Florida

Thomas Edwards and OSCA staff's Jenna Rogers provided information and an update on the work of the Judicial Management Council (JMC), the JMC Access Workgroup, and the DIY (Do It Yourself) Florida forms project. The Judicial Management Council report/recommendations that were approved by the Court in April 2014 and the DIY Florida Implementation Plan for carrying out the project are included as exhibits to this report. The Court continues to meet with the FCCC to advance this project. The Judicial Management Council access workgroup is serving in an oversight capacity and provided the below update to the full Council on February 27, 2015.

JMC Access Workgroup

The access workgroup continues to serve in a general monitoring and oversight capacity to the DIY Florida project. OSCA staff has been working with the chair of the family law forms workgroup on the identification of which forms will work in an interview process (e.g., dissolution of marriage without property or minor/dependent children). The family law forms workgroup, staffed by OSCA, and with membership including judges, magistrates, attorneys, and a county court clerk, will soon delve into the substance of the current family law forms with the intent of developing questions and answers for the DIY Florida project. In areas where additional subject matter expertise may be needed (e.g., domestic violence forms) the family law forms workgroup will reach out to those subject matter experts before finalizing any decision tree/question flow. The family law forms workgroup will also assess the sufficiency and usability of any family law interviews that have already been developed. To that end, OSCA staff also met with the FCCC staff to discuss content already developed and determine how best to proceed. Staff from OSCA provided updates to the ePortal Authority Board and the Florida Courts Technology Commission on the DIY Florida project.

Thomas Edwards, chair of the workgroup, also serves on the Access to Civil Justice Commission. Mr. Edwards serves on the commission's technology subcommittee and will continue to help to provide linkage on the DIY Florida initiative and those that may be discussed by the various workgroups of the access commission. The JMC access workgroup also provided a preliminary visual to the full Council a week prior to the February meeting, which included a draft flow chart and sample interview questions for the dissolution of marriage without property or minor/dependent children, including information on screening questions, information needing to be hyperlinked, defined, etc. All created within Excel simply to provide some context for the JMC.

DIY Florida: providing web-based interactive interviews to self-represented litigants

In April 2014 the Supreme Court approved a recommendation from the Judicial Management Council (JMC) to have the JMC Access Workgroup “work with The Florida Bar, or other identified group(s) with subject matter expertise, to ensure that interactive forms meet the needs of self-represented litigants.” The project to develop interactive web-based forms for self-represented litigants is now referred to as the DIY Florida project (oftentimes referred to as A2J because of the use of A2J software for the development).

DIY Florida is underway with the review of family law forms being conducted by the Supreme Court Family Law Forms Workgroup. As part of the approval packet in 2014, the Supreme Court also approved an implementation plan for providing web-based interviews to self-represented litigants. The implementation plan directs referral to the appropriate group, sub-group, or entity of The Florida Bar with subject matter expertise to review already developed interviews within a particular case type, and provide feedback to the OSCA. The Florida Court Clerks and Comptrollers (FCCC) have developed web-based interactive forms in the areas of eviction, including eviction and damages, and small claims (full listing of developed small claims interviews is included below). These already developed interviews provided a great starting point for the identified entity of The Florida Bar with subject matter expertise to review the interviews for legal sufficiency and accuracy and provide feedback to the OSCA. The Bar groups began their review process in late May and were requested to include not only an assessment and recommendations relating to the existing set of interviews, but also a recommendation of any additional interviews that should be part of a complete package and may not have already been developed.

As of August 19, 2015:

- OSCA has received feedback from some of the Bar committees and is awaiting additional feedback from others. Some of the committees requested additional time in August to provide adequate responses/feedback.
- OSCA has provided the Bar committee feedback received to date to a select group of judges that are also reviewing the information.
- In early August the FCCC provided a demo to assist the judges with walking through the A2J/DIY Florida interviews, and also provided a Word document with the interview questions and possible answers for the small claims and landlord tenant interviews.
- Both the Bar committees and the judges are diligently reviewing the interviews and will provide feedback to OSCA as they have it.
- OSCA staff, along with the family law forms committee are working on interviews for family law and have already developed the decision logic for a few.

Technology Subcommittee Resource Guide

At the request of Subcommittee Chair Judge Hilliard, Chuck Hays with The Florida Bar Foundation prepared a detailed Resource Guide for the Technology Subcommittee to use during the course of subcommittee work that includes information and links on integrated service delivery considerations; technology platforms utilized to expand access; and examples of access initiatives utilizing technology to expand access for clients, pro bono, and court document assembly, and eFiling. This seven page guide is embedded with a series of links to technology-related access resources, information, and examples. A copy of the guide is included as an exhibit.

Florida Justice Technology Center Business Plan

The information contained in this report pertaining to the Florida Justice Technology Center was extracted from the comprehensive business plan document for the Florida Justice Technology Center Plan. The complete business plan document contains footnotes and references that are omitted from this report due to space constraints. The introduction portion of the business plan is included as an exhibit to this report.

Florida Justice Technology Center

The impetus to create the Florida Justice Technology Center (FJTC) came about as multiple key factors – both within Florida and nationally – converged over the last several years.

- The Federal Legal Services Corporation's (LSC) investment in Technology: 15 years and \$45 million resulting in more effective use of program staff time; increased services to self-represented litigants; and literally thousands of dollars leveraged to create more effective and efficient systems through court, bar, and legal services partnerships. The Legal Services Corporation provides grant funds to legal aid organizations around the country, including 7 organizations within Florida all of whom are eligible to apply for these technology grants.
- The Florida Bar Foundation's investment in technology: 2008 implementation of a standard case management system (LegalServer) offered to all legal services programs bringing the benefits of a cloud-based system to the Florida legal services community.
- National Center for State Courts Grant: In April of 2014, The Florida Bar Foundation (Foundation) was awarded a technical assistance grant from the National Center for State Courts. This grant sponsored a visit to Chicago in order to evaluate the success of Illinois Legal Aid Online (ILAO). ILAO is an award

winning model program designed to provide interactive assistance and legal information to those seeking legal aid and legal services providers. ILAO works seamlessly within the access to justice community in Illinois through partnerships with:

- Federal and IOLTA funded legal services programs in Illinois by hosting legal information and education websites on their behalf;
- Illinois Equal Justice Coalition and Illinois Courts by assisting with the creation and implementation of court based self-help systems in every county and public library in Illinois; and
- Illinois Pro Bono Programs by providing interactive case assistance and document assembly services to volunteer attorneys as well as legal services staff advocates.

The Florida delegation represented a diverse group from the civil justice community – a judge, a staff person from a county clerk’s office, key members of The Florida Bar, members of the Foundation’s Board of Directors, a Deputy State Courts Administrator from the Office of the State Courts Administrator, and the Chair of the Florida Courts Technology Commission. This visit served as a catalyst for many delegates to re-invigorate the justice community in Florida.

- The Florida Statewide Technology Planning Framework: On November 3, 2014 The Florida Bar Foundation published a statewide technology planning framework. The framework articulates the current state of technology in the Florida community and, as a basis of comparison, includes national benchmarks and best practices for nonprofits in the use of technology. The framework illustrates that while many innovative efforts using technology exist around the state, for the most part, they operate in silos benefiting only their local communities.

In 2014, The Florida Bar Board of Governors voted to support a bridge loan to The Florida Bar Foundation. A portion of the loan was restricted in use to create:

“an independent statewide nonprofit entity with an organizational mission to increase access to justice to Floridians through the use of innovative technology and to train and support legal aid providers and pro bono attorneys in its use.”

The Florida Justice Technology Center (FJTC) will be an Administration of Justice (AOJ) grantee of The Florida Bar Foundation. It is anticipated it will incorporate in the summer of 2015.

The Florida Justice Technology Center will identify, develop, and use innovative and effective technology solutions to provide accessible and easy-to-use systems that address the legal needs of the end user. These solutions will integrate with and complement existing systems like those of the courts, the private bar, the pro bono community, and legal services programs. The FJTC will:

- Serve as a collaborative partner to ensure a statewide approach to technology planning, implementation, and integration among multiple existing local and statewide systems.
- Adopt a consumer-oriented, results-driven “no wrong door” approach.
- Support data collection and analysis methods to support strategic decision making by stakeholders.

Mission

The Florida Justice Technology Center identifies and implements technology solutions that increase the capacity of Florida’s civil justice system stakeholders to provide information, support self-help and to deliver services.

Guiding Principles

Guiding principles for the Florida Justice Technology Center have emerged from the initial listening sessions and other feedback gathering events hosted at the Legal Services Corporation’s Technology Initiative Grant conference and at major cities around the state. The Guiding Principles are meant to serve as a sort of checklist for Center initiatives to help ensure projects stay on mission:

1. Technology solutions are meant to complement and support other types of services currently offered by legal aid programs and others, as well as to create opportunities for service for those not currently able to receive assistance;
2. The Florida Justice Technology Center will solve problems and propose solutions that seek to reduce or relieve current workloads in the civil justice community;
3. The Florida Justice Technology Center will foster an environment that supports and encourages innovative uses of technology and disseminates those efforts that surface as best practices to the benefit of everyone throughout the civil justice community;
4. The Florida Justice Technology Center will take into account all barriers to access to justice, including but not limited to, barriers based on income, disability, education, and language when developing and implementing solutions.

These principles will continue to be expanded and refined as additional stakeholder feedback gatherings – currently in the planning stages for May and June of 2015 – are held.

Some **Operational Guiding Principles** have also emerged through conversations with a wide ranging group of individuals in Florida, they are:

1. All products and solutions created by the entity would need to integrate seamlessly with existing systems and technologies to the extent reasonable and practical.
2. The Florida Justice Technology Center needs to be mindful of varying stakeholder capacity. Some capacity building of the civil equal justice system may be necessary.

The Technology Subcommittee Looking Forward

The Technology Subcommittee continues to explore technology projects and initiatives that have potential for adoption in Florida to expand access and respond to the unmet legal needs of low and moderate income and disadvantaged Floridians. The next steps for the subcommittee are to identify a laundry list of potential in-person and online resources and to study those resources to select the ones with the furthest reach across the population and the ones with the highest probability of success in serving the unmet needs. This study will be multifaceted and multipronged and will include identifying potential solutions such as:

- supporting projects that utilize technology in expanding access to civil legal services for low and middle income Floridians including self-represented litigants. For example, the proposed “gateway online triage system”;
- working with the newly created Florida Justice Technology Center (FJTC) on a statewide initiative for the triage, intake, and referral of legal matters involving low and moderate income Floridians;
- expanding self-help and do-it-yourself forms projects from various entities to have further reach throughout the population.

Tangentially, the subcommittee will also look at potential obstacles or barriers to implementing the potential solutions such as:

- the costs associated with the expanding the technology;
 - equipment
 - software, subscriptions, licenses
 - staffing
 - space limitations
- initial and ongoing training;

- awareness and promotion;
- technological difference between the potential providers of the legal services and the potential customers of the legal services.

Thus far, it appears that the primary obstacle and potential barrier will be funding for the technology and infrastructure that would potentially expand access to enable the Commission and the legal profession to respond to the unmet legal needs of low income, moderate income, and disadvantaged Floridians. The Technology Subcommittee will work to identify technology solutions and will use the resources available from The Florida Bar, OSCA, the Foundation, and the Foundation's consultants to identify and provide recommendations for the full Commission to consider.

Exhibits:

- Access to Justice: Providing Self Represented Litigants with Access to Web-Based Interactive Forms (5 pages)
- DIY Florida: Implementation Plan for providing web-based interviews to self represented litigants (1 page)
- Technology Resource Guide for the Technology Subcommittee of the Florida Commission on Access to Civil Justice (7 pages)
- Florida Justice Technology Center Business Plan (6 pages)

Access to Justice:

Providing Self Represented Litigants with Access to Web-Based Interactive Forms

In March 2013, Chief Justice Polston formed an Access Workgroup of the Judicial Management Council (JMC) to focus on the identification of potential crisis situations and develop strategies to address them. At its May 17, 2013 meeting, the JMC's Access Workgroup identified a number of hurdles associated with delivering services to low income and self-represented litigants in Florida, not the least of which is the reduction of funding to legal aid service providers throughout the state.¹ As a result of these funding reductions, Florida may soon experience a self-represented litigant crisis, with fewer available attorneys and greater numbers of litigants either finding they must represent themselves in court, or forego access to the court altogether. Complicating matters is Florida's geographic diversity, disparate technology resources by county, a large and varied limited English proficiency population, and a dearth of accurate self-help data or information capturing the extent of the problem.

The Access Workgroup identified three major access categories for continued consideration: funding, technology, and service delivery. Each category has its own unique set of challenges, and this proposal seeks to address all of them in some capacity. The chronic lack of free or low-cost legal assistance, coupled with the economic downturn, has led to a crisis in the courts. The crisis is reflected by the mounting numbers of cases with unrepresented parties and the burgeoning numbers of filings in areas of the law that affect every day people's lives, such as bankruptcy, foreclosure, consumer debt, custody, divorce and landlord-tenant. The judiciary cannot ignore the inequality that unrepresented litigants experience when they are required to submit court forms concerning life-affecting legal issues. The simple act of filling out forms raises unique challenges that many of these litigants have trouble overcoming. A court system can use Document Assembly Programs² to help unrepresented litigants create the court documents they need.

Document assembly software uses a litigant's answers to questions to generate a completed personalized form that can be printed and filed manually or electronically. Document Assembly Programs lead the litigant through a logical series of question screens. The path taken depends on the user's answers to the questions – users do not see a question screen unless it applies to their situation; do not need to repeatedly input information as is required on paper forms; answer files

¹ See [March 1, 2012 Florida Bar News Article](#)

² The commercially sold TurboTax and ImmigrationPro are examples of Document Assembly Programs.

can be saved if users want to return and make changes or complete the program later; and the programs are easy to navigate even for first time users with novice computer skills.

Recommendation

On February 28, 2014, the Judicial Management Council convened and unanimously approved the following recommendation:

The Florida Court Clerks and Comptrollers (FCCC) have obtained licensing for A2J software. The Judicial Management Council (JMC) Access Workgroup recommends that, in collaboration with The FCCC, it continue to work with the ePortal Authority Board, The Florida Bar, and other identified stakeholders, to conduct an analysis and begin prioritizing which court approved forms should be made interactive and web-based. The JMC Access Workgroup should also work with The Florida Bar, or other identified group(s) with subject matter expertise, to ensure that interactive forms meet the needs of self-represented litigants. The JMC Access Workgroup recommends that The FCCC be responsible for programming the requisite interview questions and decision trees using the A2J software.

The JMC Access Workgroup recommends that Family Law Forms, already approved for statewide use by the Supreme Court, be the first forms developed in an interactive format. Further, the JMC Access Workgroup recommends the Family Law Forms Committee (comprised of members of The Florida Bar and staffed by the OSCA) work on the development of interview questions and decision trees.

The JMC Access Workgroup recommends that the Florida Courts Technology Commission (FCTC) be charged with completing the prioritization of additional forms by case type that should be integrated into the statewide eFiling Portal. The FCTC should also recommend when The Florida Supreme Court should make a referral to the appropriate substantive law committee(s) of The Florida Bar for the development of interview questions and decision trees. The appropriate Florida Bar substantive law committee(s) shall submit the final recommended questions and decision trees to The Florida Supreme Court for approval prior to being added to the statewide eFiling Portal for filers to access and complete.

Background

In May 2013, the Office of the State Courts Administrator (OSCA) received a technical assistance grant from the Center on Court Access to Justice for All³ to conduct a site visit with the New York State Courts in New York City to learn about their self-help program and gain specific expertise on implementing an access to justice program, practice or service. Based upon review of the model utilized by the New York state courts, a viable option for Florida has been identified: State Courts System collaboration with the Florida Court Clerks and Comptrollers (FCCC) to utilize a document assembly program and create interactive web-based forms for self-represented litigants⁴. Staff observed that the Access to Justice (A2J) Author⁵ guided interviews remove many of the barriers faced by self-represented litigants, allowing them to easily complete and print court documents that are ready to be filed with the court system.

OSCA staff also learned, by visiting three separate courts – family, housing (landlord/tenant), and probate – in two different boroughs of New York City, that when guided through processes that are foreign to them, litigants who use court produced Document Assembly Programs more often prepare legally sufficient pleadings and present greater information to the bench, leading to an increased chance of success on the merits and fewer applications for the same relief. With document assembly, litigants understand legal procedures better, more fully understand their rights, have greater access to information at convenient times and locations, and are more likely to complete the process faster and more frequently.

Citing to a Best Practices guide that they produced, New York judges and court staff also reported that Document Assembly Programs also improve court operations by creating legible papers for review and legally sufficient papers that reduce recidivism and paperwork. The legal information built into the programs helps alleviate the burden on court staff by decreasing time spent answering litigant

³ A project of the National Center for State Courts

⁴ Chapter 29.004, Florida Statutes, defines the elements of the state courts system. The creation, implementation, and review of filed forms are tasks that support the case management element. The Supreme Court has the active responsibility to approve the content of “basic legal materials” and forms made available to users through a court based program, including materials provided by the clerks of court. These functions are distinctive from that of the clerk. Clerks are responsible for case maintenance types of elements as described in Chapter 28, Florida Statutes. These recommendations allow clerks and courts to continue operating as prescribed by statute and court rule.

⁵ Access to Justice (A2J) Author, produced by LawHelp Interactive, is a flash-based software tool used to create a simple user interface that utilizes a question and answer format that results in a completed form. LawHelp Interactive is a subsidiary of Probono.net. Pro Bono Net is a national nonprofit organization dedicated to increasing access to justice through innovative uses of technology and increased volunteer lawyer participation.

questions. With Document Assembly Programs, courts run more efficiently and effectively, judges have better drafted paper and can more often decide disputes on the merits. Most important, providing quality Document Assembly Programs enhances public trust and confidence in the court, and litigants perceive that they have received fair and equitable justice.⁶

This proposal provides for a technology-based solution that is affordable, manageable, can be used statewide across circuit and county lines, is compliant with established E-Filing protocols, and builds upon established Supreme Court approved court forms. The proposed solution will assist court clerks in processing cases and carrying out their functions in a more uniform and expedited fashion, as well as assist the judiciary by ensuring access to more reliable case data and allowing for cases to be processed in a completely electronic environment.

Simply put, the solution will provide self-represented litigants with better access to the court system through the use of web-based interactive forms. The foundation of the project is specifically designed to assist citizens throughout Florida who do not have access to, or cannot afford a lawyer. A2J Author creates the “front-end” experience for the user. Every program has the same attractive graphic appearance with a guide walking the litigant step by step along a path that leads to the courthouse. As the litigant answers questions, A2J Author collects the user’s information. A “back-end” assembly engine⁷ is required to complete the process. While initially a technology-based solution, this plan can be expanded to provide self-help computer terminals in Florida’s courthouses and be fully integrated into a larger vision that would encompass in-person self-help services at the local level.

Implementation

Preliminary estimates to fully implement the project include hiring two full-time equivalent (FTE) positions, which may cost approximately \$161,000 annually⁸. It is anticipated that two FTEs would assist the identified committee of The Florida Bar with interview question and decision tree development for both trial and

⁶ Document Assembly Programs Best Practices Guide for Court System Development and Implementation Using A2J Author; Access to Justice New York State Courts, June 2013 Edition.

⁷ HotDocs software by HotDocs Ltd., is used to create the form template that is the basis for the finished document. HotDocs merges the information collected in A2J Author into a completed personalized court form.

⁸ Annual salary (base rate) plus benefits for one Senior Attorney I position is calculated at \$80,089.08. It is possible that a different staffing complement will be needed, but it is not anticipated to exceed the level of a Senior Attorney I.

appellate courts, review statistical data, respond to inquiries, revise/update forms as the law changes, promote the automated forms, and support other related tasks. Additional cost considerations include clerical support, interpreting/translating forms, plain language review, audio, informational video clips, and training. While this plan could be implemented beginning in Fiscal Year 2014-15 or 2015-16, in all likelihood this will be an ongoing, multi-year effort.

It is recommended that the automation of any court form have statewide application. Hence, the Judicial Management Council recommendation identifies the family law forms as the best area to begin implementation for the trial courts, and recommends the Supreme Court task the Florida Courts Technology Commission with completing the prioritization of additional forms by case type that should be integrated into the statewide eFiling Portal.

As part of the implementation effort, the Florida Courts Technology Commission (FCTC) should also be consulted to ensure that any forms developed are compatible with established E-Filing protocols and standards. Where possible, the state courts system should consider partnering with outside agencies/entities, such as law schools, public libraries, law libraries, etc. to provide greater access to the public through existing public resources. Examples of these resources include, but are not limited to, computers at public libraries, as well as assistance from the librarian if the user has trouble navigating the program.

Once the self-help forms have been automated and tested, it is important to generate a public information campaign to spread the word of their availability. This may be done via public service announcements, radio and television interviews, newspaper ads and a prominent web presence. Outreach to all legal aid programs, public libraries, law libraries, and law schools will also be conducted.

DIY Florida: Implementation Plan for providing web-based interviews to self represented litigants

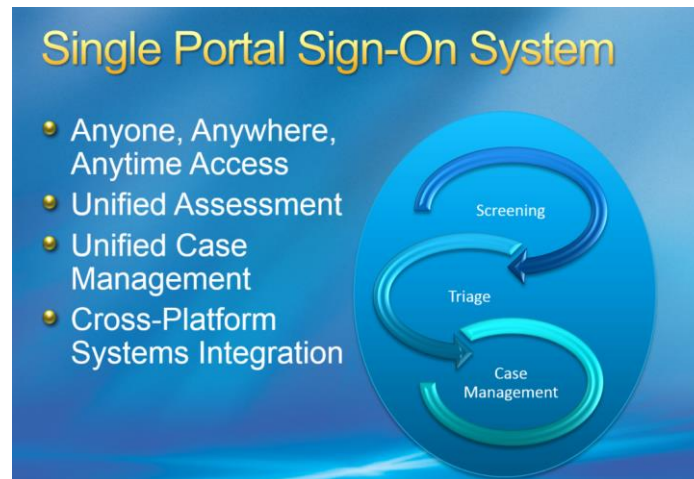


**Technology Resource Guide
for the Technology Subcommittee
of the Florida Commission on Access to Civil Justice**

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Integrated Service Delivery Considerations



Denver University Law Review

(PDF) The Access to Justice “Sorting Hat” (Article in Vol. 89:4)

- ☑ From the main suggestions:
 - ⇒ “Recognize and design around the fact that there are two different triage processes: one dealing with how a court will handle a case and one dealing with how litigants will obtain the services they need to interact with the court and other players.” (861)
 - ⇒ “Develop an agreed upon set of core principles that would guide the design of triage processes.” (861)
 - ⇒ “Consider, as one possibility, a process in which a trained assessor makes recommendations for both sets of triage based upon relatively general protocols.” (861)
 - ⇒ “Consider as an alternative system one in which an algorithm makes the recommendations based upon information provided by litigants, the court, and access providers to a web gateway, while being sensitive to the risks of non-human decision-making.” (861)
 - ⇒ “In either possible system, the decision about the track to which a court assigns a matter should be based upon the kind of tasks the court will need to do, rather than the case type.” (861)
 - ⇒ “In either possible system, the decision about the services the litigant will receive should be based upon the tasks the litigant will need to perform in the track to which she has been assigned, and her capacity to perform those tasks given the kinds of services provided.” (861)

Pew Research Center

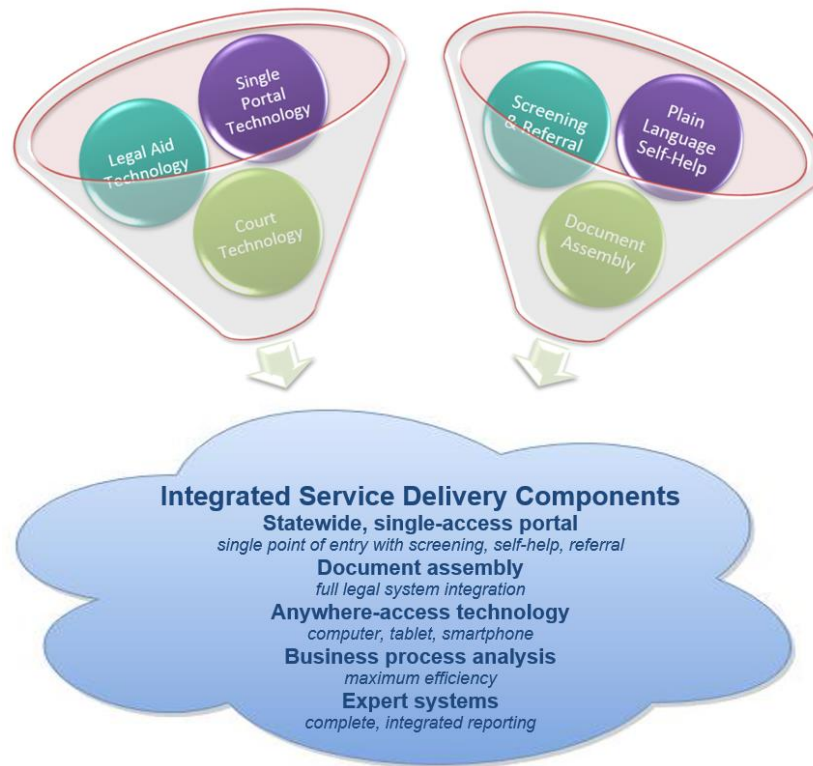
Technology use by different income groups (Presentation Slides)

- ☑ Key stats: Low income adults’ technology use (less than \$30K annual household income):
 - ⇒ Internet: 73%, Broadband at home: 47% (Slides 4-5)
 - ⇒ Cell phones: 85% (Slide 6)
 - 43% do most of their online browsing using the cell phone (Slide 8)
 - 78% use their cell phone for texting (Slide 20)
 - ⇒ Desktop or laptops: 59%, Tablets: 26% (Slides 10-11)

Legal Services NTAP (National Technology Assistance Project)

Content Example: Trends in Technology Use

Content Example: [Sources for Data and Statistics about Use of Technology](#)



[Legal Services Corporation](#)

Content Example: [Report of The Summit on the Use of Technology to Expand Access to Justice](#)

- ☑ “Technology can and must play a vital role in transforming service delivery so that all poor people in the United States with an essential civil legal need obtain some form of effective assistance...
- ☑ The vision for achieving this is every state will create a statewide access portal that provides an easy way for a person to obtain assistance with a civil legal issue.”
- ☑ Also from the LSC Report: [A Vision of an Integrated Service-Delivery System](#)

[Harvard Journal of Law & Technology](#)

Content Example - Article (2012): (PDF) [Using Technology to Enhance Access to Justice](#)

Highlights: Overviews of Available technologies for legal services delivery; Issues to consider; Mobile strategies; Tech-supported triage; Overcoming barriers

[National Center for State Courts \(NCSC\) Library](#)

Document: [Triage Protocols for Litigant Portal: A Coordinated Strategy Between Courts and Service Providers](#)

Results: The Impact of Technology

Attachment: [RESULTS_The Impact of Technology Revised Draft 31MAR2015 2.pdf](#)

- ☑ Introduction from Florida Justice Technology Center business plan

Technology Platforms Examples

Pro Bono Net

Widely-Used Examples: Self-Help and Pro Bono Platforms

Overview: The non-profit organization Pro Bono Net developed and maintains 2 website platforms that 30 states use in some combination:

- ☑ [ProBono.net](#): (From the [FAQ page](#)) “lawyer-based site... resources designed to help pro bono and public interest lawyers...”
 - ⇒ [Sites](#): Regional, national, and international sites powered by ProBono.net
 - ⇒ [Florida's site](#)
- ☑ [Pro Bono Manager](#): A pro bono practice management solution developed by ProBono.net with initial support from The Bill & Melinda Gates Foundation and The Booth Ferris Foundation. Used by over 17,000 lawyers across 15 leading international law firms.
- ☑ [LawHelp.org](#): (From the ProBono.net [FAQ page](#)) “client-based site...designed to offer the public easy access to legal information...including referrals and legal self-help.”
 - ⇒ [Partner list](#): (From the webpage) “...a network of 25 statewide information portals...developed and maintained in partnership with hundreds of nonprofit legal aid, pro bono, court-based programs and libraries across the country...”
 - ⇒ [Interactive state map](#) (links to each state's help resources)

[A2J Author](#) (Software)

Overview: [Description & Examples](#), [History & Research](#)

- ☑ Developed by the IIT Chicago-Kent College of Law [Center for Access to Justice & Technology \(CAJT\)](#) and [The Center for Computer-Assisted Legal Instruction \(CALI\)](#)
- ☑ From the CALI [website](#): “A2J Author helps legal aid attorneys create computer-based, self-guided A2J interviews for use by unrepresented litigants and others in need. The A2J interviews walk users through a step-by-step question and answer process, which, in the end, creates an (often otherwise confusing) legal form.”
- ☑ From [2010 Blog Announcement](#): Used “in 36 states, the U.S. Virgin Islands, Guam, England, Australia, Canada and Singapore.”
- ☑ From the [CAJT Overview](#): “A2J Author® is available for free to interested courts, legal service organizations, and members of the HotDocs development community for non-commercial use.”
- ☑ Kentucky [YouTube video](#) of A2J Author instructions

eFiling Service Providers Examples

Example: [e-Filing Service Providers Comparison Table](#)

- ☑ Background: Texas began selected, mandatory e-filing of court documents in 2014. Participants may select from among multiple services providers authorized to file through the portal. Texas created a [Service Provider Comparison Table](#), an excellent resource for viewing major providers (in general).

Example: [NCSC Technology Vendors](#)

Online Examples and Initiatives: Client and Pro Bono

Florida Courts

Webpage: [Florida Courts Self-Help](#)

Webpage: [Florida Courts Self-Help Centers Directory](#)

Center on Court Access to Justice for All

Content Example: (PDF) [Access Brief: Self-help Services](#)

Overview of state initiatives for self-help services (from 2012), including technologies used.

Washington State

Self-Help Portal: [Washington LawHelp](#)

Webpage: [Links](#) for the [CLEAR Hotline](#) (Coordinated Legal Education, Advice and Referral) and [online intake](#)

- ☑ Both considered “Gold Standard” examples

Illinois Legal Aid Online

Webpage: [Latest Innovations](#)

- ☑ Examples: Interactive learning content, Statewide Online Access with intake, Chat Live Help, Self-Help Centers

Webpage: [Research and Development](#)

- ☑ Examples: Spanish website, Mobile apps, Statewide Online Access System components
- ☑ Document example: [User Scenarios](#) of how the system could be accessed
- ☑ Document example: Use Cases (specifications...for...different users of the system)

Michigan Legal Help

Webpage: [Print Overview download page \(#2\)](#)

Webpage: [Michigan Legal Help Evaluation Report](#) download page

- ☑ Purpose: Jan, 2015 report to evaluate website efficacy

California Courts Online Self-Help Center

- ☑ From the main page: “Self-Help will help you find assistance and information, work better with an attorney, and represent yourself in some legal matters.”
- ☑ Self Help Centers: Note the link to an [interactive Google map](#) of Self Help Centers and Family Law Facilitators throughout the state
- ☑ Law Librarian Live Chat: Note the link to [Ask a Law Librarian](#).

Legal Aid Queensland (Australia)

Document Example: [Process flowchart: Legal information, referral and advice](#)

Pro Bono Technology Resources

LSC Report (PDF): [Report of the Pro Bono Task Force](#)

- ☑ Highlights: pp14-18 include technology recommendations

LSC webpage: [LSC Awards First Pro Bono Innovation Fund Grants](#)

- ☑ Highlights: Information on the 11 grant recipients, some of which include technology solutions

Pro Bono Net webpage: [LSNTAP/PBN Webinar: Innovations in Technology-enabled Pro Bono](#)

Online Examples and Initiatives: Court Document Assembly and eFiling

Florida Courts

Webpage: [Court Technology](#)

- ☑ Webpage: [Current Projects](#) highlights
 - ⇒ Webpage: [Electronic Filing Court Records Portal \(ePortal\)](#)
 - Webpage: [eFiling](#) (system overview)
 - Highlights: Statewide standards; implementation of XML file sharing for systems integration
 - ⇒ Status overview: [Florida Bar News Article](#)

Other Courts: [National Center for State Courts \(NCSC\)](#)

Webpage: [Electronic Filing State Links](#)

- ☑ Highlights: Page links plus state-by-state implementation status information

New York DIY Forms

Webpage (Review): [The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System's "DIY" Forms](#)

- ☑ Highlights: Describes in detail New York's development process, experience, and ongoing review process with background information about forms automation in other locations and the A2J Author software.

LSC TIG Resources and Initiatives

Example (PDF): [Principles and Best Practices for Access-Friendly Court Electronic Filing](#)

Example (PDF): [Document Assembly Best Practices Guide for Court Systems](#)

INTRODUCTION

“The key to our future success as legal service providers lies in our ability to identify the specific lawyering areas in which we can be replaced and those in which we cannot be replaced. The most prosperous law practices in 2020 will be those that are able to successfully adjust their business models to use artificial intelligence–type tools while at the same time promoting and delivering the part of the legal service value proposition that the machines are not able to provide.”¹

Technology has made a profound difference in the practice of law generally. Technology has also made a profound operational, administrative and substantive impact on nonprofit law firms across the country which provide staff and volunteer civil legal assistance to low-income and vulnerable populations.

The impact of multiple investments in access to justice technologies, including: the 15 year, \$45+ million investment of the federal Legal Services Corporation (LSC)² in technology initiative grants (TIG), more than a decade of national legal aid technology (TIG) conferences³, LSC’s Summit on the Use of Technology to Expand Access to Justice Technology report⁴ as well as funding and project development by IOLTA and legal aid programs⁵, the courts, state and local bar foundations is beginning to show measurable results.

¹ Blair Janis, How Technology Is Changing the Practice of Law, Vol. 31 No. 3, GPSolo, ABA Solo, Small Firm and General Practice Division

http://www.americanbar.org/publications/gp_solo/2014/may_june/how_technology_changing_practice_law.html

² <http://tig.lsc.gov/about-us/tigs-impact> including National Network of LawHelp Websites, Automating Legal Form and Document Preparation, Using Technology to Support Pro Bono, The A2J Law School Clinic Project, Enhancing the Legal Services Gateway with Online Intake (including triage systems), launching StatesideLegal.org - for members of the military, veterans, their families and advocates.

³ LSC has sponsored an annual legal aid technology (TIG) conference since 2000. Presentation materials from the 2007 – 2015 conferences are archived here. <http://tig.lsc.gov/tig-conference/past-conferences>

⁴ The Summit on the Use of Technology to Expand Access to Justice, <http://www.lsc.gov/media/in-the-spotlight/report-summit-use-technology-expand-access-justice> A Vision of an Integrated Service-Delivery System has five main components: 1) Creating in each state a unified “legal portal” which, by an automated triage process, directs persons needing legal assistance to the most appropriate form of assistance and guides self-represented litigants through the entire legal process. We use the term “triage” as it is commonly used today, including in the access-to-justice community, to characterize a range of strategies for allocating scarce resources most effectively. 2) Deploying sophisticated document assembly applications to support the creation of legal documents by service providers and by litigants themselves and linking the document creation process to the delivery of legal information and limited scope legal representation, 3) Taking advantage of mobile technologies to reach more persons more effectively, 4) Applying business process/analysis to all access-to-justice activities to make them as efficient as practicable, and 5) Developing “expert systems” to assist lawyers and other services providers.

⁵ In 2008, The Florida Bar Foundation invested in a web-based case management system (LegalServer) used by 27 of its 30 general support grantees. LegalServer is one of the most widely used CMS (case management system) in the national legal aid. The Foundation also funds WestlawNext user licensing for its grantees.

Access to Justice technologies supporting a broad spectrum of information, self-help and professional services for Americans with a legal need are clearly not just stop-gap measures to be explored only in the face of insufficient funding or as an alternative to the lack of a civil right to counsel⁶.

INCREASED SERVICES

- **Illinois** implemented a knowledge management system resulting in significant increases in services delivered.

Result: The Coordinated Advice and Referral Program for Legal Services (CARPLS)⁷ experienced significant increases in the delivery of services due to the creation of a knowledge management system, going from 12,000 cases to almost 50,000 cases handled by advocate staff, and 800 to 8,900 volunteer closed cases in a single year.

- **Montana** implemented a centralized case management system.

Result: Montana Legal Services Association⁸ was able to increase the number of accepted intakes by 55% per intake worker, or from 333 to 515 in one year.

TIME SAVINGS

- **Ohio** implemented an online intake system.

Result: An evaluation of an online intake system for Legal Aid of Western Ohio⁹ found that the system saved an average of 10 - 15 minutes per intake, or a staff savings equivalent to 1.0 - 1.5 FTEs over the course of a year. More clients are served without an increase in staff.

EFFECTIVE ADVOCACY STRATEGIES

- **New Mexico** implemented a statewide data capture system which has had multiple impacts on programmatic focus and litigation strategies showing that:

⁶ Charn, Jeanne. "Celebrating the "Null" Finding: Evidence Based Strategies for Improving Access to Legal Services." Yale Law Journal 122.8 (2013); 2206-234. Yale Law Journal Web. 16 Dec. 2013

⁷ CARPLS is a legal aid hotline and court-based advice desk located in Illinois and serving Cook County (the Chicago Metropolitan Area) which resolves over 85% of all cases in-house by providing information, advice and brief services including the preparation and review of legal documents. Clients with more complex needs are referred by CARPLS to a network of specialized legal and social service providers.

⁸ Montana Legal Services Association (MLSA) is a statewide LSC funded legal aid program with 13 full-time case handling attorneys and fewer than 40 total staff to serve the entire state. There are no other legal aid programs in Montana.

⁹ Legal Aid of Western Ohio is an LSC funded legal aid program serving 32 northwest and west central Ohio counties through offices in Dayton, Defiance, Findlay, Lima, Sandusky, Springfield and Toledo. Like Florida, Ohio has LSC and non-LSC funded general legal aid programs and a state support center.

- The high-poverty Gallup area accounts for almost 12% of car repossession cases from all areas of the state, even though the Gallup area has only 3.5% of the state's population. Further analysis indicated that repossession cases also clustered disproportionately high during the first four months of the year, when clients are most likely to be using a tax refund check to buy a used car.

Result: This information helped New Mexico Legal Aid¹⁰ fashion a new consumer protection outreach strategy and case priorities for the Gallup area during the first four months of 2015. The data also suggested a correlation between car repossession cases and evictions in the 87301 zip code in the Gallup area, meaning the program will now give higher priority to assisting car repo clients who are also living in rental housing within that zip code.

- An eviction spike in one county correlated with an upswing in evictions within the zip code that included the county's highest concentration of Spanish speaking clients.

Result: A re-assessment of Spanish language tenant educational materials used in that region of the state.

- Out of all clients seeking help for a divorce during the first year that the data system was operational, the data sets for that problem code showed that 79% of all new applicants were women. Of the divorce clients who were men, new cases came disproportionately from the state's two largest urban areas - Albuquerque and Las Cruces - while rural areas tended to account for proportionately higher numbers of women seeking divorce.

Result: NMLA's statewide family law practice group will use this information to evaluate how outreach strategies and case priorities should vary for both gender and location.

- A report for clients seeking help with domestic violence protection orders showed that women applied for help with such cases at a rate eight times higher than men. For the male clients in this category, the urbanized city of Las Cruces area generated a surprisingly small number of cases, while the much smaller city of Gallup was linked to a disproportionately high number of cases. Gallup also has the highest poverty rate of any community in the state, and one of the highest percentages of off-reservation Native American population.

Result: Cross-training between domestic violence advocates and NMLA's Native American Program attorney advocates who serve the Gallup area.

¹⁰ New Mexico Legal Aid (NMLA) is the statewide LSC funded legal aid program. NMLA is considered to be a national leader in rural delivery and access to justice technology. Established in 1953 as the Legal Aid Society of Albuquerque, NMLA merged with the Santa Fe, Las Cruces and Pueblo Nations legal aid programs to form a statewide legal aid program in 2003. In 1998, a statewide telephone-based intake system was implemented, named Law Access New Mexico. This function is used to conduct intake calls, assess cases and provide brief services to New Mexico residents. New Mexico's poverty rate is 21.9%, the second highest percentage in the nation, according to Census Bureau figures released in September 2014.

EFFECTIVE USE BY SELF REPRESENTED LITIGANTS¹¹

- **Utah** The courthouse-based Self Help Center¹² shows dramatic increase in use without any on-site assistance available. The Center offers telephone and Live Chat assistance upon request--staffed by a mix of lawyers and non-lawyers.

Result: The average number of contacts per day during 2007, the first year of operation, was 8.47 contacts per day. For 201, it was 85.86 contacts per day.

- **Michigan** – Michigan Legal Help Program consists of two components – an interactive website and affiliated Self Help Centers that provide legal information assistance to individuals representing themselves. The Michigan Legal Help website was assessed by an independent consultant¹³ for its efficacy in helping self-represented litigants successfully¹⁴ navigate the divorce process.¹⁵

Result: 74% of litigants using the website obtained a judgment of divorce, a rate virtually equal to that of other self-represented litigants and attorney represented litigants¹⁶

Result: Self-represented litigants conclude the divorce process in less time than attorney represented litigants with those using the website concluding slightly more quickly than self-represented litigants who did not use the website. This finding is true even when controlling for other factors, such as complexity.

- **New York** – Using A2J Author interviewing software,¹⁷ a graphic interface designed for low-literacy users, and HotDocs the New York State Courts Access to Justice Program produces attractive, user friendly document assembly programs known as DIY (Do-It-Yourself) forms that address pro se needs and alleviate many of the challenges

¹¹ <http://www.pewinternet.org/2013/09/25/http://www.lsc.gov/media/news-items/2014/sandman-rawdon-highlight-use-technology-aid-self-represented-litigants>

¹² <https://www.utcourts.gov/selfhelp/contact/>

¹³ Kerry Sheldon, Founding Partner, Bridgeport Consulting. Michigan Legal Help Evaluation Report, January 2015 <http://www.mplp.org/Taskforces/technology/michigan-legal-help-evaluation-report-1-15.pdf>

¹⁴ Success was defined as reaching a judgment within a reasonable amount of time. The experience of Michigan Legal Help was compared to that of other self-represented litigants (those without attorney representation who do not use the website) as well with attorney-represented litigants.

¹⁵ Divorce was chosen because the Divorce With or Without Children interview “currently accounts for 64% of all completed interviews available through the Michigan Legal Help website. Divorce pleadings derived from the website are also easily identifiable as such” p. 5

¹⁶ In Michigan in 2013, 48% of divorce cases were filed by self-represented plaintiffs and 68% of cases had one or more self-represented litigants. 42% of divorce cases had no attorney involvement at all.

¹⁷ Created in 2004 by the Center for Computer Assisted Legal Instruction (CALI) and the IIT Chicago Kent College of Law Center for Access to Justice and Technology (now Illinois Legal Aid Online—the national award-winning independent nonprofit access to justice technology program).

unrepresented litigants face when creating their court papers.¹⁸ Completed programs are hosted on Pro Bono Net's national online document assembly project, Law Help Interactive. Unrepresented litigants can access the New York programs on the internet¹⁹ or in terminals in court clerk's offices, Help Centers and Public Access Law Libraries. Considerable outreach and training on the DIY forms programs are done with court personnel. Note: The New York Court System does not yet have e-filing.

Result: In 2012, over 100,000 court documents were assembled from the 24 programs²⁰ used in different case types in different courts throughout the state.²¹

Result: Staff training dramatically increases usage of DIY forms. In 2013, 73.19% of DIY Form users state that court personnel referred them to the programs.²²

Result: The usage statistics show a steady rise from year to year.

Result: User survey data indicates the DIY forms programs are extremely popular and beneficial for litigants.²³

¹⁸ Klempner, Rochelle, The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System's "DIY" Forms, May 27, 2014 Fordham Urban Law Journal, Fordham University

- It is impossible to fully access the legal system without completing and filing written court papers.
- Templates for the preparation of court documents are generally the first resource requested by unrepresented litigants and the first task taken on by court systems.
- Most state court systems have promulgated statewide uniform forms...yet standardized forms are not enough...unless the forms address the other obstacles that unrepresented litigants often encounter.
- Many court systems and many local courts have placed forms online.
- Plain language forms increase unrepresented litigants access to the legal system. A 2013 report from Canada, The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self Represented Litigants found that one of the most consistent complaints unrepresented litigants have is difficulty reading and understanding the forms due to confusing and complex language. According to the National Assessment of Adult Literacy, twenty-one percent of Americans read below a fifth grade reading level. http://nces.ed.gov/naal/kf_demographics.asp

¹⁹ The NYS Unified Court System's website for unrepresented litigants is known as CourtHelp <http://www.nycourthelp.gov>. Most of the programs are also available through the New York LawHelp site www.lawhelpny.org (all 50 states have LawHelp or Legal Help sites, see also www.floridalawhelp.org)

²⁰ See DIY Forms, New York State Courts Access to Justice Program, <https://nycourts.gov/ip/nya2j/diyforms.shtml> listing programs by case type and court and providing links to programs landing pages

²¹ The Access to Justice Program follows a set of Best Practice Guidelines for the development of DIY Form programs.

- All programs are developed with input from developers groups comprised of court personnel throughout the state who volunteer their time.
- Programs are also sent to stakeholders from public interest groups, private practice and legal aid organizations.
- Every program is sent to a plain language specialist to simplify the text.
- Every program receives extensive testing before it is released to the public
- Once a program is live, considerable outreach and training is done with court personnel.

²² Usage of the DIY Forms programs are tracked through statistics supplied by Law Help Interactive, the court's case management system and user surveys completed by litigants.

Result: *DIY Form programs save court clerks time and improve court efficiency in a number of ways:*

- *Court personnel spend less time answering litigant questions when the litigant has already been guided step-by-step through the process by a document assembly program.*
- *More accurate and complete forms lead to fewer rejection of pleadings.*
- *Court employees in the Court Help Centers and Clerk's Offices find they can serve more litigants in a shorter amount of time at a faster pace by employing the DIY Forms programs.*
- *Court congestion is potentially eased as access to DIY forms is available beyond business hours and saves litigants trips to the courthouse when self-help is available at all times.*

Result: *The DIY Form programs also minimizes litigant frustration.*

"The most compelling reason for court systems to invest their energies in production of document assembly programs is the potential to eliminate filing trips to the courthouse though e-filing, which sends the litigants information directly to the court's case management system. Integrating the document assembly program with the courts case management system eliminates hours and hours of data entry time and is a major improvement in courthouse efficiency."

- Klempner, The Case for Court-Based Document Assembly Programs:
A Review of the New York State Court System's "DIY" Forms, p. 1217

NEW YORK DOES NOT HAVE E-FILING. FLORIDA DOES.

²³ Common themes appear over and over in the optional comment section: gratitude, appreciation, ease of use of programs and how simple they are to complete. Litigants who saved money using DIY forms or who could not afford legal fees also expressed their appreciation.



SUBCOMMITTEE INTERIM REPORT TO THE COMMISSION

Subcommittee:	Funding Subcommittee
Date:	September 8, 2015
Prepared By:	Hon. Emerson Thompson, Chair

As reported at the May 15, 2015, meeting of the Florida Commission on Access to Civil Justice (ATJ Commission), the Funding Subcommittee broke out into three workgroups. Cy Pres Rules/Statutes, Legislative Funding and Developing Support in the Business Community.

On August 18, the Subcommittee met and members were updated by Subcommittee Chair Judge Emerson Thompson and Attorney Gwynne Young regarding personal meetings with business and chamber of commerce leaders.

Cy Pres Rules/Statutes: 18 states have legislation or court rules providing for legal aid to receive class action residuals.¹ The ABA Center for Access to Justice Initiatives supplied a synopsis of the key provisions in all 18 states rules or statutes. Legislation and Court Rules Providing for Legal Aid Receive Class Action Residuals is attached as Exhibit 1. The March 2014 Virginia Journal of Social Policy and the Law article, Class Action Settlement Residue and Cy Pres Awards: Emerging Problems and Practical Solutions has been reviewed.² Consumer class action attorney John Y. Yanchunis developed a memorandum on cy pres awards. Subcommittee members discussed the potential beneficiary or beneficiaries of such a rule, noting that several of the Foundation's 30 general support grantees have existing relationships through which

¹ ABA LEGAL SERVICES NOW April 30, 2015, Issue #96 - The Oregon legislature recently amended the Oregon Code of Civil Procedure to add a new section which provides that, in class action cases in which residual funds exist, at least 50 percent of the amount not paid to class members will be paid to the Oregon State Bar for funding legal aid. This makes Oregon the 18th state with a cy pres rule or statute specifically allowing class action residuals to be paid to legal aid; in eight of those states, the rule or statute requires that a percentage be paid to legal aid. http://www.americanbar.org/content/dam/aba/publishing/legal_services_now/ls_sclaid_lsnapr15.authcheckdam.pdf

² http://www.vjspl.org/wp-content/uploads/2014/03/3.25.14-Cy-Pres-Awards_STE_PP.pdf

they receive funding from cy pres. In a follow-up meeting, Chair Thompson and Attorney John Yanchunis discussed the beneficiary/beneficiaries question and Attorney Yanchunis drafted a potential cy pres rule, Residual Funds to Named Organization, providing beneficiary options for further consideration.

Outcome: The Subcommittee recommends the Commission consider a cy pres rule in Florida. A draft rule provided by Attorney Yanchunis is attached as Exhibit 2 as is Exhibit 3 RULE 1.220. CLASS ACTIONS³, also provided by Attorney Yanchunis.

Legislative Funding: As former Chief Judge Belvin Perry is familiar with garnering legislative support, he presented to the Subcommittee on the Florida's legislative funding process, noting that a member of each body is needed to offer a bill to support funding for any project. Meredith McBurney of the ABA Center for Access to Justice Initiatives provided historic and present day state-by-state comparative data on legislative funding for legal aid. Note was taken that some members of the Commission recommended, during the full Commission meeting, that any funding requests to the legislature should not necessarily be for lump sum funding for legal aid services, but should be for services, programs or projects with a project plan including expected outcomes and return on investment.

Outcome: The Subcommittee will assist in planning for any legislative budget requests depending upon further work of the subcommittees and the full Commission. However, the Subcommittee defers to legislative funding priorities set by the Florida Supreme Court and does not plan to take any independent action in the near future regarding any legislative funding.

Developing Support in the Business Community: The direct and indirect costs to companies when employees' civil legal needs are left unmet was researched and survey questions developed to allow employers to survey the incidence of legal issues in their lives and the impact on their morale and productivity at work. Subcommittee members discussed anti-lawyer perceptions of business that inure to legal aid, the work going on at the ABA and national level to educate business, the need to create urgency among business leaders around what happens when employees legal needs are not met and for a forum in which to present objective data. Subcommittee members were also provided a July 15 publication, "Supporting Survivors: the Economic Benefits of Providing Civil Legal Assistance to Survivors of Domestic Violence."⁴

In order to increase support from the business community for access to justice, we have to increase awareness of the value of access to justice among business community leaders and in doing so increase support by the business community of all the components of an accessible system, including legal aid.

³ March 16, 2015 Florida Rules of Civil Procedure 44-47

⁴ Jennifer S. Rosenberg and Denise A. Grab, Institute for Policy Integrity, New York University School of Law, <http://policyintegrity.org/documents/SupportingSurvivors.pdf>

Outcome: Increasing business community leader awareness of the value of access to justice will require the development and implementation of a strategic outreach and education plan. The Funding Subcommittee foresees two paths towards achieving that goal, each of critical importance. 1) For the business community to be one of the key audiences for which a communications plan and specific messaging on access to justice (including the value of legal aid) is developed--which we understand to be the purview of the Outreach Subcommittee 2) The other is to determine what information about or from the business community the Commission might need or want and in so doing give both the Outreach and Funding subcommittees more materials with which to work. For this reason the Funding Subcommittee suggests working in partnership with the Outreach Subcommittee and requests that the two Subcommittees leadership and/or staff determine a shared approach to information gathering and dissemination. The Funding Subcommittee could focus on the information the Commission members might want, e.g. information from businesses, such as how their employees are being affected by lack of access to assist in ROI analysis or existing/potential corporate partnership projects that strengthen business relationships with various civil justice community stakeholders—such as loans of corporate attorneys for clinics or workshops. The Outreach Subcommittee could plan the form, audience, and dissemination with instructions for receipt of the responses.



Legislation and Court Rules Providing for Legal Aid to Receive Class Action Residuals*

First draft prepared 10/29/07; Most recent update 3-30-15

California

Legislature amended Section 384 of the California Code of Civil Procedure to permit payment of class action residuals “to nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent.

Effective date: January 1, 1994.

Amount received to date: It is unknown how much is generated specifically because of the statute. California legal aid programs received at least \$9,017,000 in 2012.

Implementation work and analysis: Cy Pres Manual prepared in 2014. Many legal aid providers in California actively solicit cy pres contributions.

For more information, please contact: Stephanie Choy, Managing Director, Legal Services Trust Fund Program, State Bar of California, stephanie.choy@calbar.ca.gov, 415/538-2249.

Connecticut

The Connecticut Supreme Court amended Sec. 9-9 of the Connecticut Superior Court Rules in 2014 to state that “.....Any order, judgment or approved settlement in a class action that establishes a process for identifying and compensating members of the class may designate the recipient or recipients of any such residual funds that may remain after the claims payment process has been completed. In the absence of such designation, the residual funds shall be disbursed to the organization administering the program for the use of interest on lawyers’ client funds pursuant to General Statutes 51-81c for the purpose of funding those organizations that provide legal services for the poor in Connecticut.”

Effective Date: January 1, 2015

Amount received to date: None

Implementation work and analysis:

For more information, please contact: Steve Eppler-Epstein, Executive Director, Connecticut Legal Services, supplier-epstein@connlegalservices.org, 860/344-0447, ext. 109

Hawaii

The Hawaii Supreme Court amended Rule 23 of Hawaii's Rules of Civil Procedure, in January, 2011, to state that "...it shall be within the discretion of the court to approve the timing and method of distribution of residual funds and to approve the recipient(s) of residual funds, as agreed to by the parties, including nonprofit tax exempt organizations eligible to receive assistance from the indigent legal assistance fund under HRS section 607-5.7 (or any successor provision) or the Hawaii Justice Foundation, for distribution to one or more of such organizations. Judges may approve the distribution of residual funds to legal aid organizations or to the Hawaii Justice Foundation to disburse to one or more of such organizations."

Effective date: July 1, 2011

Amount received to date: In 2013, legal aid providers received \$130,000 of \$450,000 total cy pres funds awarded in state pursuant to rule. \$124,000 received in 2014 through 6/30/14.

Implementation work and analysis: In 2011, the Hawaii Access to Justice Commission prepared a Toolkit.

For more information, please contact: Bob LeClair, Executive Director, Hawaii Justice Foundation, hjf@hawaii.rr.com, 808/537-3886

Illinois

Legislature amended Section 5 of the Code of Civil Procedure to add new Section 2-807 (735 ILCS 5/2-807), to establish a presumption that residual funds in class actions will go towards organizations that improve access to justice for low-income Illinois residents. Courts have the discretion to award up to 50% of the funds to other organizations that serve the public good as part of a settlement if the court finds good cause to do so, but at least 50% of these funds must go to support legal aid.

Effective date: July 1, 2008

Amount received to date: Approximately \$5,300,000 in 2013FY. This includes awards made pursuant to the legislation and others.

Implementation work and analysis: The Chicago Bar Foundation has developed educational materials and sample language that they distribute to area judges, class action lawyers and other relevant parties (e.g., claims administrators). CBF website provides detailed information.

For more information, please contact: Bob Graves, Executive Director, Chicago Bar Foundation, bglaves@chicagobar.org,

Indiana

New language in Rule 23 of the Indiana Rules of Civil Procedure, adopted by the Indiana Supreme Court, reads, in part: “In matters where the claims process has been exhausted and residual funds remain, not less than twenty-five percent (25%) of the residual funds shall be disbursed to the Indiana Bar Foundation to support the activities and programs of the Indiana Pro Bono Commission and its pro bono districts. The court may disburse the balance of any residual funds beyond the minimum percentage to the Indiana Bar Foundation or to any other entity for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.”

Effective date: January 1, 2011

Amount received to date: \$2,069.59

Implementation work and analysis: Completed education campaign. Discussed federal courts local rule. Rule is seen as influencing local federal courts.

For more information, please contact: Andrew Homan, Indiana Pro Bono Commission, ahoman@inbf.org, 317/269-7863.

Kentucky

The Kentucky Supreme Court amended Civil Rule 23 to direct at least 25% of residual funds of any class action award to civil legal aid. Funds are to be maintained by the Kentucky IOLTA Board of Trustees and distributed to legal aid programs in accordance with a formula based on poverty population.

Effective date: January 1, 2014

Amount received to date: None; see implementation date.

Implementation work and analysis: The new rule has been published in the state bar magazine and judges will be advised of the new rule at their annual colleges.

For more information, please contact: Judge Roger Crittenden (ret.), Chair, Kentucky Access to Justice Commission, rlcrittenden@fewpb.net

Louisiana

The Louisiana Supreme Court enacted Rule XLIII, which states in part: “In matters where the claims process has been exhausted and Cy Pres Funds remain, such funds may be disbursed by the trial court to one or more non-profit or governmental entities which support projects that will benefit the class or similarly situated persons consistent with the objectives and purposes of the underlying causes of action on which relief was based, including the Louisiana Bar Foundation

for use in its mission to support activities and programs that promote direct access to the justice system.”

Effective date: September 24, 2012

Amount received to date:

Plans for implementation:

For more information, please contact:

Maine

The Maine Supreme Judicial Court has amended Civil Rule 23(f)(2) as follows: “The parties may agree that residual funds be paid to an entity whose interests reasonably approximate those being pursued by the class. When it is not clear that there is such a recipient, unless otherwise required by governing law, the settlement agreement should provide that residual fees, if any, be paid to the Maine Bar Foundation to be distributed in the same manner as funds received from interest on lawyers trust accounts.....”

Effective date: March 1, 2013

Amount received to date: Neither the MBF nor any legal aid provider has received an award since the rule’s effective date. MBF received \$58,708 in 2012.

Plans for implementation: MBF and providers to talk about heightening awareness of the new rule.

For more information, please contact: Diane Scully, Executive Director, Maine Bar Foundation, dscully@mbf.org, 207/622-3477.

Massachusetts

New language in Rule 23 of the Massachusetts Rules of Civil Procedure, adopted by the Supreme Judicial Court of Massachusetts, reads, in part: “In matters where the claims process has been exhausted and residual funds remain, the residual funds shall be disbursed to one or more nonprofit organizations or foundations (which may include nonprofit organizations that provide legal services to low income persons) which support projects that will benefit the class or similarly situated persons consistent with the objectives and purposes of the underlying causes of action on which relief was based, or to the Massachusetts IOLTA Committee to support activities and programs that promote access to the civil justice system for low income residents of the Commonwealth of Massachusetts.”

Effective date: January 1, 2009

Amount received to date: Since June, 2011, \$1,605,000 has been received; \$343,000 to IOLTA and the balance to individual legal aid programs.

Implementation work and analysis: IOLTA staff have provided judges and court clerks throughout the state with a brochure and other materials regarding the rule change.

For more information, please contact: Jayne Tyrrell, Executive Director, Massachusetts IOLTA Committee, jtyrrell@maiolta.org, 617/723-9093.

Montana

The Montana Supreme Court amended Rule 23 of the Montana Rules of Civil Procedure to state that “In matters where the claims process has been exhausted and residual funds remain, not less than fifty percent (50%) of the residual funds shall be disbursed to an Access to Justice Organization to support activities and programs that promote access to the Montana civil justice system. The court may disburse the balance of any residual funds beyond the minimum percentage to an Access to Justice Organization or to another non-profit entity for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.”

Effective date: January 1, 2015

Amount received to date: None (see effective date)

Implementation work and analysis:

For more information, please contact: Amy Sings in the Timber, Executive Director, Montana Justice Foundation, asings@mtjustice.org, 406/523-3920.

Nebraska

The Nebraska Legislature amended section 30-3839 of Revised Statutes Cumulative supplement, 2012, to provide that: “Prior to the entry of any judgment or order approving settlement in a class action described in section 25-319, the court shall determine the total amount that will be payable to all class members if all class members are paid the amount to which they are entitled pursuant to the judgment or settlement. The court shall also set a date when the parties shall report to the court the total amount that was actually paid to the class members. After the report is received, the court, unless it orders otherwise to further the purposes of the underlying cause of action, shall direct the defendant to pay the sum of the unpaid residue to the Legal Aid and Services Fund”.

Effective date: April, 2014

Amount received to date: None

Implementation work and analysis:

For more information, please contact:

New Mexico

The New Mexico Supreme Court adopted new language in Rule 23 of the New Mexico Rules of Civil Procedure: The new language provides that residual class action funds may be distributed to non-profit organizations that provide legal services to low income persons, the IOLTA program, the entity administering the pro hac vice rule and/or educational entities that provide training, teaching and legal services that further the goals of the underlying causes of action on which relief was based. Funds also may go to other non-profit organizations that support projects that benefit the class or similarly situated persons consistent with the goals of the underlying causes of action on which relief was based.

Effective date: May 11, 2011

Amount received to date: \$10,000 to Equal Access to Justice (a combined private bar campaign for 5 NM legal aid programs) through the Access to Justice Commission. May have been awards to individual programs as well.

Implementation work and analysis: Holding a CLE on cy pres at the 2013 annual bench & bar conference - panelists include judges and private attorneys. The purpose of the CLE is two-fold: 1) educate and inform; and 2) establish a committee.

For more information, please contact:

North Carolina

Legislature amended Subchapter VIII of Chapter 1 of the General Statutes to add new Article 26B, which reads, in part: “Prior to the entry of any judgment or order approving settlement in a class action established pursuant to Rule 23 of the Rules of Civil Procedure, the court shall determine the total amount that will be payable to all class members, if all class members are paid the amount to which they are entitled pursuant to the judgment or settlement. The court shall also set a date when the parties shall report to the court the total amount that was actually paid to the class members. After the report is received, the court, unless it orders otherwise consistent with its obligations under Rule 23 of the Rules of Civil Procedure, shall direct the defendant to pay the sum of the unpaid residue, to be divided and credited equally, to the Indigent Person’s Attorney Fund and to the North Carolina State Bar for the provision of civil legal services for indigents.”

Effective date: October 1, 2005

Amount received to date: Awards received by IOLTA and disbursed to legal aid programs pursuant to division described in rule: 2007=\$18,000; 2010=\$2,200; 2011=\$33,000; 2013=\$528,000 (plus an additional direct award of \$130,000 for a total of \$658,000 for 2013). Individual legal aid programs also have received awards.

Implementation work and analysis: In 2012, the North Carolina Access to Justice Commission prepared a toolkit.

For more information, please contact: Evelyn Pursley, Executive Director, North Carolina IOLTA, epursley@ncbar.gov, 919/828-0477.

Oregon

The legislature amended section 32 of the Oregon Code of Civil Procedure to add a new section O, which provides that, in class action cases where residual funds exist, at least 50 percent of the amount not paid to class members be paid to the Oregon State Bar for the funding of legal services. The remainder will be paid to any entity for purposes that the court determines are directly related to the class action or directly beneficial to the interests of class members

Effective date: March 4, 2015

Amount received to date: None (see effective date)

Implementation work and analysis:

For more information, please contact: Judith Baker, Director of Legal Services Program, Oregon State Bar, jbaker@osbar.org, 503/431-6323

Pennsylvania

The Supreme Court of Pennsylvania has revised Chapter 1700 of the Rules of Civil Procedure, directing that at least 50% of residual funds in a given class action shall be disbursed to the Pennsylvania IOLTA Board to support activities and programs which promote the delivery of civil legal assistance. The balance may go to IOLTA, or to another entity for purposes that have a direct or indirect relationship to the objectives of the underlying class action, or which otherwise promote the substantive or procedural interests of the members of the class.

Effective date: July 1, 2012

Amount received to date: In fiscal year ended June 30, 2013, cy pres revenue to IOLTA totaled \$78,010. In fiscal year ended June 30, 2014, revenue totaled \$2,282,191. Individual legal aid programs also have received awards.

Implementation work and analysis: IOLTA developed a toolkit that has been distributed to Pennsylvania trial judges. They also are working on an educational plan for the class action bar and the federal and state trial bench.

For more information, please contact: Stephanie Libhart, Executive Director, Lawyer Trust Account Board, stephanie.libhart@pacourts.us, 717/238-2001.

South Dakota

Legislature approved Section 16-2-57 of its codified laws on the settlement of class action lawsuits to provide that “Any order settling a class action lawsuit that results in the creation of a common fund for the benefit of the class shall provide for the distribution of any residual funds to the Commission on Equal Access to Our Courts. However, up to fifty percent of the residual funds may be distributed to one or more other nonprofit charitable organizations that serve the public good if the court finds there is good cause to approve such a distribution as part of the settlement.”

Effective date: 2008

Amount received to date: There have been 3 payments to date; paid to the Commission on Equal Access to Our Courts, which disbursed the funds to legal aid providers.

Implementation work and analysis: There are relatively few class action cases in South Dakota.

For more information, please contact: Thomas Barnett, Executive Director and Secretary Treasurer, State Bar of South Dakota, thomas.barnett@sdbar.net, 605/224-7554.

Tennessee

Legislature amended the Tennessee Code Annotated, Title 16, Chapter 3, Part 8, to create the Tennessee Voluntary Fund for Indigent Civil Representation and authorize it to receive contributions from several sources, including: “The unpaid residuals from settlements or awards in class action litigation in both state and federal courts, provided any such action has been certified as a class action under Rule 23 of the Tennessee Rules of Civil Procedure or Rule 23 of the Federal Rules of Civil Procedure;” In 2009, Rule 23.08 was amended to clarify that judges and parties to class actions may enter into settlement decrees providing for unclaimed class action funds to be paid to the Tennessee Voluntary Fund for Indigent Civil Representation.

Effective date: September 1, 2006

Amount received to date: None

Implementation work and analysis:

For more information, please contact: Ann Pruitt, Executive Director, Tennessee Alliance for Legal Services, apruitt@tals.org, 615/627-0956

Washington

New language in Rule 23, adopted by the Washington Supreme Court, reads, in part: “Any order entering a judgment or approving a proposed compromise of a class action certified under this rule that establishes a process for identifying and compensating members of the class shall provide for the disbursement of any residual funds. In matters where the claims process has been exhausted and residual funds remain, not less than twenty-five percent (25%) of the residual funds shall be disbursed to the Legal Foundation of Washington to support activities and

programs that promote access to the civil justice system for low income residents of Washington State. The court may disburse the balance of any residual funds beyond the minimum percentage to the Legal Foundation of Washington or to any other entity for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.”

Effective date: January 3, 2006

Amount received: In 2013, received \$6,196,718 due to Rule 23, out of total cy pres receipts of \$15,935,503.

Implementation work and analysis: Staff and volunteers of the Legal Foundation of Washington and LAW Fund continually educate judges and lawyers about the rule and about the value of using cy pres to benefit access to justice through gifts to the Legal Foundation of Washington.

For more information, please contact: Caitlin Davis Carlson, Executive Director, Legal Foundation of Washington, caitlindc@legalfoundation.org, 206/624-2536, ext 288.

*Prepared by Meredith McBurney, Resource Development Consultant for the American Bar Association’s Resource Center for Access to Justice Initiatives, a project of the Standing Committee on Legal Aid and Indigent Defendants. Contact Meredith at meredithmcburney@msn.com or 303/329-8091.

Residual Funds to Named Organization.

(f) Residual Funds . Either in its order entering a judgment or approving a proposed settlement of a class action certified under this rule that establishes a process for identifying and compensating members of the class or by a subsequent order entered when residual funds are determined to exist, the court shall provide for the disbursement of residual funds, if any, to one or both of the following entities:

(1) The Florida Bar Foundation to support activities and programs that promote access to the civil justice system for low income residents of Florida; or

(2) a nonprofit organization that provide legal services to low income residents of Florida.

(3) For purposes of Subparagraph (f) , “residual funds” are

(A) unclaimed funds, including uncashed checks and other unclaimed payments, that remain after payment of all approved class member claims, expenses, litigation costs, attorneys' fees, and other court-approved disbursements or dispositions to implement the relief granted, whether such payments are drawn from a common fund or directly from the judgment debtor's own funds; or

(B) if it is impossible or economically impractical to distribute the common fund to the class , the entire common fund after payment of all approved expenses, litigation costs, attorneys' fees, and other court-approved disbursements or dispositions to implement the relief granted, whether such payments are drawn from a common fund or directly from the judgment debtor's own funds.

(a) Prerequisites to Class Representation. Before any claim or defense may be maintained on behalf of a class by one party or more suing or being sued as the representative of all the members of a class, the court shall first conclude that ;

(1) the members of the class are so numerous that separate joinder of each member is impracticable,

(2) the claim or defense of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class,

(3) the claim or defense of the representative party is typical of the claim or defense of each member of the class, and

(4) the representative party can fairly and adequately protect and represent the interests of each member of the class.

(b) Claims and Defenses Maintainable. A claim or defense may be maintained on behalf of a class if the court concludes that the prerequisites of subdivision (a) are satisfied, and that:

(1) the prosecution of separate claims or defenses by or against individual members of the class would create a risk of either:

(A) inconsistent or varying adjudications concerning individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications concerning individual members of the class which would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the adjudications, or substantially impair or impede the ability of other members of the class who are not parties to the adjudications to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to all the members of the class, thereby making final injunctive relief or declaratory relief concerning the class as a whole appropriate; or

(3) the claim or defense is not maintainable under either subdivision (b)(1) or (b)(2), but the questions of law or fact common to the claim or defense of the representative party and the claim or defense of each member of the class predominate over any question of law or fact affecting only individual members of the class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy. The conclusions shall be derived from consideration of all relevant facts and circumstances, including

(A) the respective interests of each member of the class in individually controlling the prosecution of separate claims or defenses,

(B) the nature and extent of any pending litigation to which any member of the class is a party and in which any question of law or fact controverted in the subject action is to be adjudicated,

(C) the desirability or undesirability of concentrating the litigation in the forum where the subject action is instituted, and (D) the difficulties likely to be encountered in the management of the claim or defense on behalf of a class.

(c) Pleading Requirements. Any pleading, counterclaim, or crossclaim alleging the existence of a class shall contain the following:

(1) Next to its caption the designation: "Class Representation."

(2) Under a separate heading, designated as "Class Representation Allegations," specific recitation of:

(A) the particular provision of subdivision (b) under which it is claimed that the claim or defense is maintainable on behalf of a class;

(B) the questions of law or fact that are common to the claim or defense of the representative party and the claim or defense of each member of the class;

(C) the particular facts and circumstances that show the claim or defense advanced by the representative party is typical of the claim or defense of each member of the class;

(D) (i) the approximate number of class members, (ii) a definition of the alleged class, and (iii) the particular facts and circumstances that show the representative party will fairly and adequately protect and represent the interests of each member of the class; and

(E) the particular facts and circumstances that support the conclusions required of the court in determining that the action may be maintained as a class action pursuant to the particular provision of subdivision (b) under which it is claimed that the claim or defense is maintainable on behalf of a class.

(d) Determination of Class Representation; Notice; Judgment: Claim or Defense Maintained Partly on Behalf of a Class.

(1) As soon as practicable after service of any pleading alleging the existence of a class under this rule and before service of an order for pretrial conference or a notice for trial, after hearing the court shall enter an order determining whether the claim or defense is maintainable on behalf of a class on the application of any party or on the court's initiative. Irrespective of whether the court determines that the claim or defense is maintainable on behalf of a class, the order shall separately state the findings of fact and conclusions of law upon which the determination is based. In making the determination the court

(A) may allow the claim or defense to be so maintained, and, if so, shall state under which subsection of subdivision (b) the claim or defense is to be maintained,

(B) may disallow the class representation and strike the class representation allegations, or (C) may order postponement of the determination pending the completion of discovery concerning whether the claim or defense is maintainable on behalf of a class. If the court rules that the claim or defense shall be maintained on behalf of a class under subdivision (b)(3), the order shall also provide for the notice required by subdivision (d)(2). If the court rules that the claim or defense shall be maintained on behalf of a class under subdivision (b)(1) or subdivision (b)(2), the order shall also provide for the notice required by subdivision (d)(2), except when a showing is made that the notice is not required, the court may provide for another kind of notice to the class as is appropriate. When the court orders postponement of its determination, the court shall also establish a date, if possible, for further consideration and final disposition of the motion. An order under this subsection may be conditional and may be altered or amended before entry of a judgment on the merits of the action.

(2) As soon as is practicable after the court determines that a claim or defense is maintainable on behalf of a class, notice of the pendency of the claim or defense shall be given by the party asserting the existence of the class to all the members of the class. The notice shall be given to each member of the class who can be identified and located through reasonable effort and shall be given to the other members of the class in the manner determined by the court to be most practicable under the circumstances. Unless otherwise ordered by the court, the party asserting the existence of the class shall initially pay for the cost of giving notice. The notice shall inform each member of the class that

(A) any member of the class who files a statement with the court by the date specified in the notice asking to be excluded shall be excluded from the class,

(B) the judgment, whether favorable or not, will include all members who do not request exclusion, and

(C) any member who does not request exclusion may make a separate appearance within the time specified in the notice.

(3) The judgment determining a claim or defense maintained on behalf of a class under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those persons whom the court finds to be members of the class. The judgment determining a claim or defense maintained on behalf of a class under subdivision (b)(3), whether or not favorable to the class, shall include and identify those to whom the notice provided in subdivision (d)(2) was directed, who have not requested exclusion and whom the court finds to be members of the class.

(4) When appropriate,

(A) a claim or defense may be brought or maintained on behalf of a class concerning particular issues, or

(B) class representation may be divided into subclasses, and each subclass may be treated as a separate and distinct class and the provisions of this rule shall be applied accordingly.

(e) Dismissal or Compromise. After a claim or defense is determined to be maintainable on behalf of a class under subdivision (d), the claim or defense shall not be voluntarily withdrawn, dismissed, or

compromised without approval of the court after notice and hearing. Notice of any proposed voluntary withdrawal, dismissal, or compromise shall be given to all members of the class as the court directs.



FLORIDA COMMISSION ON ACCESS TO CIVIL JUSTICE

SUBCOMMITTEE INTERIM REPORT TO **THE COMMISSION**

Subcommittee:	Outreach – Interim Report
Date:	September 8, 2015
Prepared By:	Francine Walker, lead staff

Members: Chief Justice Jorge Labarga, Chair; Florida Bar President-elect Ramón Abadin; CFO Jeff Atwater; Attorney General Pam Bondi; Sen. Rob Bradley; Rep. Charles McBurney and Ad Hoc members Talbot “Sandy” D’Alemberte and Bentina C. Terry.

The subcommittee’s charge is to:

(1) Determine strategies to educate various target audiences on access to justice issues and the need for a strong civil legal assistance program, including:

- The general public;
- The judicial, legislative and executive branches;
- Florida Bar members and law students;
- Civil legal service providers and the pro bono community;
- The business community;
- Funders;
- The media; and
- Other stakeholders.

(2) Ensure consistent communications messaging from the commission and all of the subcommittees regarding study, progress, reports and recommendations; and

(3) Identify possible outreach partner organizations for distribution of information and discussion forums.

The subcommittee has met three times: March 2, 2015; April 20, 2015; and August 24, 2015.

Accomplishments include:

--The commission has a logo/graphic, a website, social media platforms and broadcasts/tapings of meetings by the Florida Channel at <http://wfsu.org/gavel2gavel>.

--A press conference was held announcing the commission. Media availability of commission members for interviews was offered at the first two commission meetings. Media coverage has been very good.

--The Chief Justice and the President of The Florida Bar have been speaking to lawyer and non-lawyer groups about the commission. 2014-15 Florida Bar President Greg Coleman discussed the commission with daily newspaper editorial boards around the state in early 2015 and was joined by the Chief Justice for two of those meetings. 2015-16 President Ray Abadin has pledged to continue this dialogue in his travels.

--Frequently asked questions (FAQs) about the commission as well as an elevator speech and key messages are in use.

--A Q&A on the gateway portal has been developed and approved; a name for the portal is pending.

--A communications plan is in place with efforts underway to provide: a standard presentation for use by commissioners (an initial version was approved by the subcommittee and staff will continue to update it); promotion of actual stories of people confronting civil legal matters, including those with moderate, fixed or low income; promotion of statistics collected to show the dramatic impact of lack of civil legal representation on the community as a whole and to point out benefits such as reducing crime, deterring emotional problems and increasing workplace productivity; the development of videos that can be shown as part of presentations or shared on social media and websites; and the development of other tactics to build awareness of the commission's achievements and support for its recommendations.

--After the interim report is issued, Outreach Subcommittee staff will publicize it through various communications channels and tools, including: news releases, press conferences, editorial board meetings, op/eds, social media posts and arranged speaking engagements/presentations. The subcommittee and staff will continue to develop outreach/educational materials as needed to communicate the work of all of the subcommittees and the Commission.

The Outreach Subcommittee will continue to meet its charge and assist the other subcommittees in communicating about their work.

Florida Commission on Access to Civil Justice Communications Plan
Approved by the Outreach Subcommittee August 24, 2015

Objectives

The communications objectives of the Florida Commission on Access to Civil Justice are: to educate the general public and key stakeholders on access to justice issues and the need for a strong civil legal assistance system; ensure consistent messaging from the commission and all of the subcommittees regarding study, progress, reports and recommendations, and deliverables; and build awareness of and the commission's achievements and support for its recommendations.

Situation Analysis

Recognizing that economic disparity threatens access to a fair and impartial judicial system, Florida Chief Justice Jorge Labarga issued an administrative order on Nov. 24, 2014, establishing the Florida Commission on Access to Civil Justice. The 27-member commission includes leaders from all three branches of Florida government, The Florida Bar, The Florida Bar Foundation, civil legal aid providers, the business community, and other stakeholders, who are working in a coordinated effort to identify and remove barriers to civil justice. Because access to civil justice is a societal problem, the commission is bringing the public and private sectors together to improve existing programs and identify innovative solutions. An effective communications strategy will be critical to accomplishing the commission's goals.

Stakeholder Analysis

Targeted audiences include:

- the general public (as users, or potential users, of the justice system, as well as supporters for a strong civil legal assistance system)
- the judicial, legislative, and executive branches (whose work directly impacts the justice system, has the potential to improve it, and whose efficiency can be improved when low-income and self-represented litigants are able to access needed civil legal resources)
- Bar members and law students (who work within, or will work within, the justice system and can bring their services to bear on civil legal needs)
- civil legal service providers and the pro bono community (whose work is focused on providing access to justice for low-income individuals and families)
- the business community (whose expertise and support can be applied to devising innovative solutions and who will benefit when their employees are able to access needed civil legal resources)
- funders (whose support will be critical)
- the media (who are an important conduit of information to all of the above audiences)

- other stakeholders (as identified through the commission's work)

Elevator Speech and Key Messages

Elevator speech:

The Florida Commission on Access to Civil Justice is working to find ways to increase meaningful and informed access to civil justice, especially for Floridians who are disadvantaged, indigent and are among the working poor who have legal needs that must be addressed. People with landlord-tenant, divorce, child custody, and consumer issues who can't get legal assistance have their health, safety, housing and employment threatened. Access to civil justice is a societal problem and this commission is bringing the public and private sectors together to improve existing programs and identify innovative solutions.

Key Messages:

The current civil justice system is broken. Legal aid has only been able to address about 20% of the needs of low-income citizens. Moderate income Floridians without the resources to hire a lawyer or to effectively represent themselves also experience a civil justice access gap. Civil legal needs can tear apart a person's life and lead to and compound other serious problems.

Access to civil justice is a societal problem with every day consequences. Civil legal needs include family matters such as divorce and child custody, veterans' benefits and needs, landlord-tenant disputes and consumer problems among others. Vulnerable populations such as children, the elderly, persons with disabilities, domestic violence victims and others have unique and often complex civil legal needs, but they are traditionally underserved or not served at all.

The civil legal services gap affects every citizen in our state, and the collective experience and broad perspectives of the members of this commission will be focused on developing solutions through a coordinated, collaborative and holistic approach.

Chief Justice Labarga emphasized at the April 20 outreach subcommittee meeting the need to communicate that the commission will not just study and develop recommendations and then cease to exist; rather it will continue its work, dealing with issues as they arise.

Support Materials Recommended or Requested by Outreach Subcommittee members

- A standard presentation for use by commission spokespersons
- Actual stories of people confronting civil legal matters, including those with moderate, fixed or low incomes.
- Statistics to show the dramatic impact of lack of civil legal representation on the community as a whole and to point out benefits such as reducing crime, deterring emotional problems and increasing workplace productivity.
- Videos that could be shown as part of presentations or shared on social media and websites
- Information gathered through the efforts of the commission and its subcommittees, such as a study on the economic impact of civil legal assistance, employer surveys regarding their employees' civil legal needs, or information on Florida companies that have a pro bono requirement for their legal counsel.

Communication Channels and Tools

- News releases, press conferences, media availability before and coverage of full commission meetings
- Editorial board meetings
- Op-eds
- Social media (possibly including advertising)
- Website
- Florida Channel broadcasts/tapings on the Florida Supreme Court's Gavel to Gavel website at <http://wfsu.org/gavel2gavel/>
- Speaking engagements/presentations to:
 - Meetings of Chamber of Commerce and other business groups
 - Legislative committees
 - Local bar associations and other Florida Bar groups
 - Law students
 - Civic and philanthropic organizations
- Articles in publications of partner organizations
- Reports and recommendations
- E-mail communications

Resources & Timeline

Apart from the commission members, the primary human resources for the communications effort are the staff to the outreach subcommittee of the commission, who are employees of The Florida Bar, the Florida Supreme Court, the Office of the State Courts Administrator, and The Florida Bar Foundation. No budget has been developed as of yet. Communications efforts are ongoing, but will require focus around milestones such as meetings of the full commission and the publication of reports, including an interim report to the Court no later than October 1, 2015, and a final report and recommendations to the Court no later than June 30, 2016.

Evaluation

Success measures would include news media coverage and social media impressions, tracking of audiences reached through speaking engagements, website analytics, and key stakeholder buy-in as demonstrated through the adoption of the commission's recommendations. Periodic surveys of the general public, Bar members, pro se litigants and other users of the court system could potentially shed light on the success of the commission and of its communications efforts.

For more information, please contact Francine Walker, lead staff member to the Outreach Subcommittee: 850-561-5762; fwalker@flabar.org