

## Supreme Court of Florida

FOR IMMEDIATE RELEASE 07/01/2016

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### **Access to Civil Justice Commission Submits Report to Supreme Court**

TALLAHASSEE -- The Florida Commission on Access to Civil Justice has submitted its [Final Report](#), summarizing its work for the last year and a half and making just one recommendation to the Florida Supreme Court: Don't stop now.

The judges, lawmakers, statewide elected leaders, lawyers and business executives who make up [Florida's Access Commission](#) voted unanimously in support of a permanent commission at their [last meeting](#). The 27-member commission has been hard at work since it was created in late 2014 by an [administrative order](#) signed by Florida Chief Justice Jorge Labarga. But June 30, 2016 -- the deadline for its final report -- also marked the ending of the commission itself.

Some three dozen states have established Access to Civil Justice Commissions in the last two decades and Chief Justice Labarga, who served as chair of the Access Commission, strongly supports a long-term commission.

In a letter to his colleagues on the Supreme Court, he praised the Florida Access Commission for the foundation it has laid. "While much remains to be done, I am proud of the Commission's achievements thus far," he wrote. "I am confident that the Commission is on the right path toward addressing the long-term and complex issues that impede access to the civil justice system by disadvantaged, low-income and moderate-income Floridians."

From the day he signed the order creating the commission, Chief Justice Labarga has stressed that the focus must be on not just people in poverty but also those in the middle class. He also has emphasized just as strongly that the existence of barriers keeping people from meaningful access to civil justice is a problem confronting the entire society, not just the legal community.

“The Commission is prepared to continue its efforts to build partnerships as we strive to collaboratively identify, support, and implement a continuum of services that are designed to afford meaningful access to civil justice for all Floridians,” the chief justice wrote his fellow justices.

The Florida Bar and the Florida Bar Foundation have been co-equal partners in the Access Commission, which also has included members of the business community, leaders from both the executive and legislative branches, and a range of leaders in the legal community.

Building on [previous reports](#), the Access Commission’s final report updates [interim recommendations](#) it made in the fall of 2015:

- **Gateway Portal**: As envisioned by the Access Commission, the gateway portal would serve as an online connector to existing resources, such as hotlines, law libraries, legal aid organizations, and court self-help centers. The Commission is working with the Florida Justice Technology Center, a nonprofit center that works on increasing access to justice through technology, to design and implement a pilot project in Clay County.
- **Law professors and retired judges**: Changes to the Rules Regulating The Florida Bar that would allow retired judges and retired and active law professors to serve as “emeritus attorneys” in some case, advising people on a pro bono basis, are being considered by Bar committees. If approved, will be submitted to the Supreme Court for consideration this fall.
- **Class-action lawsuit residual funds**: The Bar’s Civil Rules Committee is researching whether a statute or rule change would be required to designate for legal aid programs any funds left over after class-action settlements are distributed to the plaintiffs covered by the lawsuit.

The final report concluded that a permanent commission is needed in Florida to bridge the gap that keeps too many people from meaningful access to civil justice.

“There is still much work to be done to ensure that innovative and creative methods are employed to enhance access to justice for the many thousands of vulnerable and underserved Floridians – including children, the elderly, persons with disabilities, veterans, domestic violence victims, human trafficking victims and those with limited English proficiency,” the report reads under its “Next Steps” conclusion.

The report and more information about the Commission can be found on its website at [www.flaccessjustice.org](http://www.flaccessjustice.org) or on the Florida Supreme Court website at [www.floridasupremecourt.org](http://www.floridasupremecourt.org).

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# **FLORIDA COMMISSION**

## ON ACCESS TO CIVIL JUSTICE

### **FINAL REPORT**

**JUNE 30, 2016**

“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*

The Honorable Jorge Labarga, Chair  
Chief Justice, Supreme Court of Florida

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President, The Florida Bar

R. Alexander Acosta  
Dean, College of Law,  
Florida International University

John A. Attaway, Jr.  
Senior Vice President and General Counsel,  
Publix Super Markets

The Honorable Jeff Atwater  
Chief Financial Officer, State of Florida

Martha Barnett  
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The Honorable Pam Bondi  
Attorney General of Florida

The Honorable Rob Bradley  
The Florida Senate

Nikki Ann Clark  
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Gregory W. Coleman  
Immediate Past President, The Florida Bar

The Honorable Timothy J. Corrigan  
Judge, United States District Court,  
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Marshall M. Criser, III  
Chancellor, State University System

The Honorable Linda Doggett  
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Benjamin J. Gibson  
Assistant General Counsel,  
Executive Office of the Governor

The Honorable C. Robert Hilliard  
County Judge, Santa Rosa County

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Dominic C. MacKenzie  
President, The Florida Bar Foundation

The Honorable Charles McBurney  
The Florida House of Representatives

Kathleen Schin McLeroy  
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Byron Russell  
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The Honorable Bertila Soto  
Chief Judge, Eleventh Judicial Circuit

The Honorable Emerson R. Thompson, Jr.  
Immediate Past President,  
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Robin Hassler Thompson  
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Gwynne Young  
Past President, The Florida Bar



June 30, 2016

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 Final Report. The report documents the significant work and accomplishments of the Commission since its establishment in the fall of 2014. While much remains to be done, I am proud of the Commission's achievements thus far. I am confident the Commission is on the right path toward addressing the long-term and complex issues that impede access to the civil justice system by disadvantaged, low income, and moderate income Floridians.

The Final Report recommends the establishment of a permanent Florida Commission on Access to Civil Justice as a means to build upon the foundation established in the first term. The Commission is prepared to continue its efforts to build partnerships as we strive to collaboratively identify, support, and implement a continuum of services that are designed to afford meaningful access to civil justice for all Floridians.

On behalf of the Commission, I commend this Final Report for your favorable consideration.

Respectfully submitted,

Jorge Labarga

**ATJ Commission**

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# **FINAL REPORT**

## **Florida Commission on Access to Civil Justice**

**June 30, 2016**

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### **I. BACKGROUND**

In the fall of 2014, Chief Justice Jorge Labarga issued an administrative order establishing the Florida Commission on Access to Civil Justice. Commission members (27 total) include leaders from each branch of government, the legal community, the business community, and others whose expertise and knowledge bring broad-based perspectives to the issues at hand. The Commission is staffed by The Florida Bar, the Office of the State Courts Administrator, and The Florida Bar Foundation.

The Commission was assigned seven charges:

1. Provide a forum for discussion among the judicial branch, legislative branch, executive branch, the civil legal services and pro bono community, Bar leaders, funders, the business community, and other interested stakeholders, about issues affecting access to civil justice for disadvantaged, low income, and moderate income Floridians.
2. Identify and examine barriers that impede access to civil justice for disadvantaged, low income, and moderate income Floridians.
3. Determine how to promote coordination of legal services delivery to low income Floridians, for optimum efficiency and effectiveness.
4. Consider and evaluate components of a continuum of services for the unrepresented, 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.

5. Examine ways to leverage technology in expanding access to civil justice for disadvantaged, low income, and moderate income Floridians.
6. 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.
7. Examine how available resources might be maximized and identify how additional resources might be procured in order to provide stable funding in support of services that enhance access to civil justice for disadvantaged, low income, and moderate income Floridians.

To accomplish these charges, the full Commission met in person five times (January 2015, May 2015, September 2015, January 2016, and May 2016). Five subcommittees also were created and met on a regular basis. Since its inception, the Commission has diligently researched the unmet civil legal needs of disadvantaged, low-income, and moderate-income Floridians and considered Florida's legal assistance delivery system. These efforts have created a forum for collaboration among organizations seeking to improve access to civil justice and heightened awareness of the needs of Florida's citizens.

This report details the accomplishments made since the Commission's establishment, provides a summary of the work completed by each subcommittee, and describes proposed next steps, including recommendations to the Supreme Court.

## **II. COMMISSION ACCOMPLISHMENTS**

### **A. ATJ Knowledge Base**

The Commission facilitated the creation of a searchable knowledge base containing information regarding initiatives already underway in Florida that increase access to civil justice. The knowledge base also includes information regarding available local, statewide, and national resources; reports issued by other state commissions; documentation of access to justice efforts that are occurring around the world; and reports prepared by Florida's Commission and its subcommittees. The Commission encouraged the legal community (courts, clerks, law schools, legal aid providers, local bar associations, and others) to provide reports to Commission staff on current and future initiatives so that their efforts can be shared and their resources made available through the knowledge base and the Commission website. On May 15, 2015 the [Access to Justice Knowledge Base](#)<sup>1</sup> became available via the Commission's website. The knowledge base is continuously updated as new information becomes available.

### **B. Self-Represented Litigants Survey**

In 2016 the Commission developed a 36-question survey for self-represented litigants to gather information about their experience(s) with the trial courts and self-help centers in each of Florida's 67 counties. The survey was made available via the [Commission website](#),<sup>2</sup> on the [Florida Courts website](#),<sup>3</sup> and

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<sup>1</sup>Link to the Knowledge Base: <http://www.flaccessstojustice.org/atj-resources/>

<sup>2</sup>Link to Commission website: <http://www.flaccessstojustice.org/>



is anticipated to be made available on the websites of the circuit clerks of court. The survey was specifically designed for ease of use and compatibility with mobile devices. The survey includes questions regarding demographics, litigants' interaction with court and clerk staff, resources available and provided (including forms), and gaps in the availability of services. This survey is currently underway and staff will provide a report of data findings to the Commission at a future meeting.

### **C. Interim Report Recommendations and Status**

The Commission made several recommendations to the Florida Supreme Court in its [interim report](#).<sup>4</sup> The recommendations and current status are:

1. In May 2015, the Commission voted to support, in concept, the creation of a Statewide Gateway Portal and directed the Access to and Delivery of Legal Services Subcommittee to develop an implementation plan. At its January 2016 meeting, upon receiving an update on the project, the Commission further recommended the continued development of a Statewide Gateway Portal including a pilot project, subject to obtaining adequate funding and the Supreme Court's authorization.

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<sup>3</sup> Link to the Florida Courts website: <http://www.flcourts.org/>

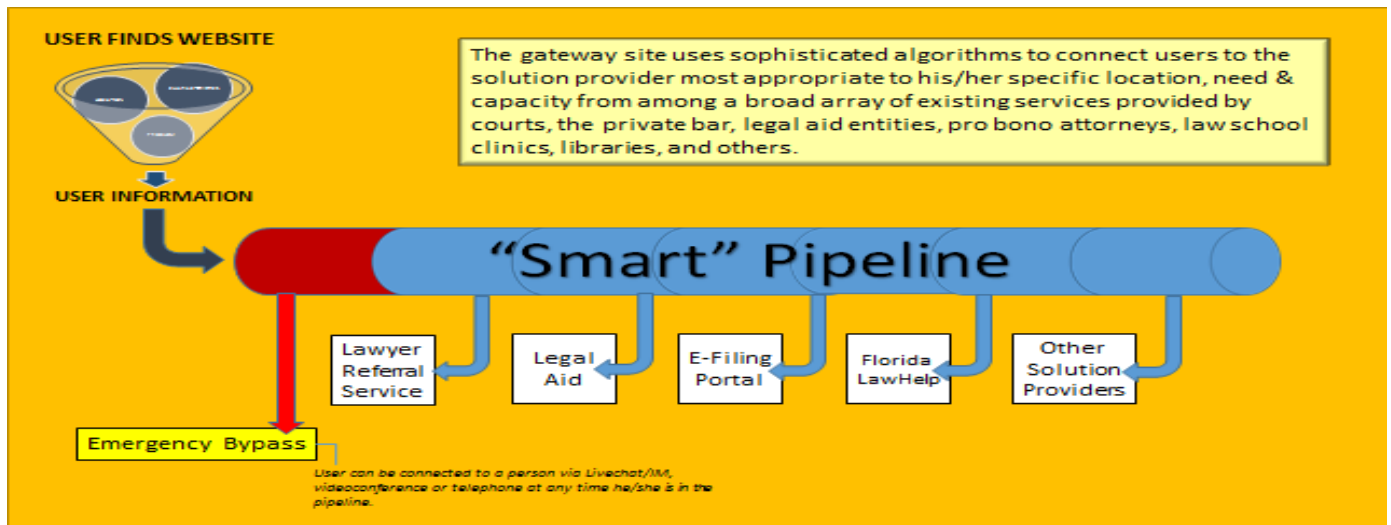
<sup>4</sup>Link to the Commission Interim Report: <http://www.flaccessjustice.org/wp-content/uploads/2016/01/Florida-Commission-ATJ-Interim-Report.pdf>

***Current Status:***

Members of the Access to and Delivery of Legal Services Subcommittee presented a pilot project implementation plan to the Supreme Court. The Supreme Court communicated its appreciation for continued development of the Statewide Gateway Portal pilot project in Clay County. The Clay County pilot project will be funded through a portion of a national settlement provided to the State of Florida through the Attorney General's office. The Commission, through the Access to and Delivery of Legal Services Subcommittee, is working with the [Florida Justice Technology Center](#)<sup>5</sup> (FJTC) to design and implement the pilot project. This pilot is a proof-of-concept that uses an exploratory process designed to: 1) assess feasibility of a statewide triage system, 2) identify factors that affect system success, and 3) determine implementation strategies with the greatest potential for the access to civil justice service delivery system. If the pilot project is successful, it is anticipated the gateway will connect users to a wide range of information and service entities including, but not limited to, legal aid organizations, local court self-help centers, free online resources including DIY Florida, Florida's Elder Law Hotline, law school clinics, law libraries, and The Florida Bar Lawyer Referral Service.

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<sup>5</sup>The Florida Justice Technology Center (FJTC) is a new statewide nonprofit dedicated to increasing access to justice through the innovative use of technology. FJTC works 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 for those confronting civil legal issues such as divorce, child custody, foreclosure, landlord-tenant disputes, home ownership, veterans benefits and elder affairs. <http://floridajusticetechnologycenter.org/>



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The Commission will review the findings of the pilot including the full quantitative, qualitative, and replication analysis in order to evaluate whether a statewide triage gateway is a viable part of the solution to providing better access to justice. The Commission will also evaluate user outcomes, user demographics, and the gateway’s effectiveness in addressing the needs of users with limited English proficiency and participants with low literacy levels.

2. The Commission recommended revisions to Rule 12 of The Rules Regulating The Florida Bar (Emeritus rule) to permit retired judges and retired and active law professors to serve as emeritus attorneys.

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<sup>6</sup>Visual representation of the Triage Pilot Program in Clay County.

***Current Status:***

The Supreme Court referred the revisions to The Florida Bar for consideration and recommendation. The referral went to The Florida Bar's Board Rules Committee, and the committee approved the proposed changes. The proposed changes to the Emeritus Rule had its first reading in late May 2016 and is scheduled for a second reading in late July 2016. If approved, the proposed changes will be published in the August 15, 2016, edition of *The Bar News* and will be filed with the Court on or before October 31, 2016.

3. The Commission recommended adoption of the Conference of Chief Justices and Conference of State Court Administrators Resolution 5: Reaffirming the Commitment to Meaningful Access to Justice for All.

***Current Status:***

The Court approved the Commission's recommendation to adopt the Conference of Chief Justices and Conference of State Court Administrators [Resolution 5: Reaffirming the Commitment to Meaningful Access to Justice for All](#).<sup>7</sup>

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<sup>7</sup>The Center on Court Access to Justice for All helps judges and courts advance access to justice, especially for poor and low-income individuals, by offering resources on 15 strategies and technical assistance. It works closely with the Conference of Chief Justices, the Conference of State Court Administrators and other national court organizations to implement access-to-justice solutions. Link to Resolution 5: [https://www.ncsc.org/~media/Microsites/Files/access/5%20Meaningful%20Access%20to%20Justice%20for%20All\\_final.ashx](https://www.ncsc.org/~media/Microsites/Files/access/5%20Meaningful%20Access%20to%20Justice%20for%20All_final.ashx)

4. The Commission recommended (1) that a Florida Civil Legal Resources Access Website be created, beginning with the work already done by the Continuum of Services Subcommittee; and (2) that the Florida Justice Technology Center be tasked with maintaining and updating the Resources Website.

***Current Status:***

The Florida Justice Technology Center began to address the recommendation that it maintain and update a resources website. The FJTC shared that it maintains the already-established FloridaLawHelp.org website, and the FJTC has recently incorporated suggestions from the Continuum Subcommittee to that website. Both the FJTC and the Continuum Subcommittee noted the difficulty in having a complete resources listing and continue to work diligently on determining which resources are currently available to Floridians that will help them obtain meaningful access to civil justice.

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

***Current Status:***

The Supreme Court referred this recommendation to The Florida Bar's Civil Rules Committee and directed it to work with the Commission to evaluate the issue of whether a *cy pres* proposal in Florida is more appropriate for statutory or rule enactment. The Civil Rules Committee is currently researching this matter.

### III. SUMMARY OF SUBCOMMITTEE FINAL REPORTS

#### A. Outreach<sup>8</sup>

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

- 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;
- Entities that may provide funding support;
- The media; and
- Other stakeholders.

The Commission also charged the Outreach 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 information and discussion forums.

Thus far, the Outreach Subcommittee has conducted the following activities in pursuit of the charges.

#### 1. Communication

Since the establishment of the Commission, members of the Outreach Subcommittee have communicated with the public through various

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<sup>8</sup>Outreach Subcommittee Final Report: <http://www.flaccessstojustice.org/wp-content/uploads/2016/06/ATJ-Outreach-Subcom-Final-ADA.pdf>

channels about the purpose and goals of the Commission. For example, Chief Justice Jorge Labarga and presidents of The Florida Bar have discussed the Commission's work with daily newspaper editorial boards around the state, as well as during numerous speaking engagements and media opportunities. The chief justice also participated in the [White House Forum on Increasing Access to Justice](#),<sup>9</sup> joining a panel of other chief justices in a discussion of the impact of fines and fees on justice.

In addition to in-person communication efforts by its members, the Outreach Subcommittee developed the following communication tools relating to the Commission's mission:

- A standard PowerPoint presentation, to be updated by staff as necessary;
- Stories of people with moderate, fixed, or low income who are confronting civil legal matters;
- Statistics collected to demonstrate the impact of legal life events on individuals and the community, as well as to note the benefits in certain cases of legal representation, one piece of the access to justice strategy;
- Videos that can be shown as part of presentations or shared on social media and websites;
- Responses to frequently asked questions about the Commission;
- An “elevator speech” about the purpose of the Commission; and
- Other key messages to build awareness of the Commission's achievements and support for its recommendations.

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<sup>9</sup>The forum's web page is available at <https://www.whitehouse.gov/photos-and-video/video/2016/04/19/white-house-forum-increasing-access-justice>

The Outreach Subcommittee also publicizes reports of activities of the Commission. For example, after the Commission issued its interim report in October 2015, Outreach Subcommittee staff publicized the report through various communications channels and tools, including news releases, press conferences, editorial board meetings, op-eds, social media posts, and arranged speaking engagements and presentations.

## 2. Internet and Social Media

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 website with a Commission logo to increase recognition and 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](#).<sup>10</sup>

### ***Further Development and Research***

#### *Education and Surveys of the Business Community*

In December 2015, the Outreach Subcommittee and Funding Subcommittee jointly began developing a strategic outreach and education plan to increase business community leaders' awareness of the value of their employees' access to civil justice. The subcommittees will survey employees of Florida businesses and organizations to determine which legal issues concern employees the most. The survey will improve employers' and employees' understanding of the types of legal matters

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<sup>10</sup>Available at <http://wfsu.org/gavel2gavel>



that employees experience in their lives and which, in turn, affect productivity when they face challenges in accessing the civil legal system.

In May 2016, a second joint meeting was held to consider questions for the survey and to determine how best to implement distribution of the survey. Subcommittee members decided to take the following steps:

1. Send a letter from the Commission to associations and employers, explaining the goals of the survey and providing information on the costs of employees' legal issues to employers, such as absenteeism and reduced productivity.
2. Send a test survey to employees of a state agency, and then send the final surveys to a selected group of employers and employees.
3. After receipt of survey responses, conduct outreach about the results in person to business leaders and to employees via social media.

#### *Online Triage Gateway Portal*

As a follow-up to prior discussions, the Outreach Subcommittee selected "FLAG," Florida Legal Access Gateway, as the name for the Online Triage Gateway portal.

### **B. Access to and Delivery of Legal Services<sup>11</sup>**

The Access to and the Delivery of Legal Services Subcommittee was charged with determining how to promote coordination of legal services delivery to low-income Floridians for optimum efficiency and effectiveness and identifying and building partnerships among the courts, members of the

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<sup>11</sup>Access to and the Delivery of Legal Services Subcommittee Final Report: <http://www.flaccessstojustice.org/wp-content/uploads/2016/06/ATJ-Access-Subcom-Final-ADA.pdf>

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. The Access Subcommittee created three working groups to research and address the charge.

The Access Subcommittee conducted the following initial work:

1. The Justice Gap

The Access Subcommittee reviewed and analyzed the Justice Gap analysis prepared by Greacen & Associates LLC, a consultant to The Florida Bar Foundation ([“Greacen Analysis”](#)).<sup>12</sup> This analysis allowed the Access Subcommittee to have a better understanding of the magnitude of the Justice Gap including the data required to document and demonstrate the gap in services.

2. Emeritus Rule

The Access Subcommittee determined that in order to eliminate barriers to *pro bono* representation and enhance access to justice, Rule 12 of the Rules Regulating The Florida Bar (the “Emeritus Attorney Rule”) should be amended to permit retired judges and retired and active law professors to serve as emeritus attorneys. Further, the Access Subcommittee proposed expanding areas of law in which emeritus attorneys are allowed to practice and allowing emeritus attorneys to provide advice and

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<sup>12</sup>Interim Report of the Florida Commission on Access to Civil Justice, 31-34 (Oct. 1, 2015) (justice gap analysis prepared by Greacen and Associates, LLC (Aug. 2015): <http://www.flaccessjustice.org/wp-content/uploads/2016/01/Florida-Commission-ATJ-Interim-Report.pdf>

assistance to clients whose legal problems are not likely to be subject to litigation.

In May 2015, the Commission adopted the Access Subcommittee's proposal and recommended that the Pro Bono Legal Services Committee of The Florida Bar formulate appropriate language to effectuate the proposal. After the proposed amendment to the Emeritus Attorney Rule was drafted, a recommendation was made to the Supreme Court in the Commission's Interim Report. The Court referred the proposed amendment to The Florida Bar and, in March 2016, the Rules Committee of the Board of Governors of The Florida Bar unanimously recommended the proposed changes to the full Board of Governors. The proposed changes to the Emeritus Rule had their first reading in late May 2016 and are scheduled for a second reading in late July 2016. If approved, the proposed changes will be published in the August 15 edition of *The Bar News* and will be filed with the Court on or before October 31, 2016.

### 3. Business Process Analysis

The Access Subcommittee reviewed the concept of Business Process Analysis ("BPA," also known as Business Process Improvement),<sup>13</sup> its

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<sup>13</sup>Business process analysis helps an organization improve how it conducts its functions and activities to reduce overall costs, provide more efficient use of scarce resources, and better support customers. It introduces the notion of process orientation, of concentrating on and rethinking end-to-end activities that create value for customers, while removing unnecessary, non-value-added work. Generally, technology is utilized to automate or streamline business processes. A business process analysis will enable an organization to understand how the processes work and how the processes can be improved: <http://www.slideshare.net/EnfocusSolutions/business-process-analysis-11471310>

application to the practice of law, and how the concept may be utilized to increase efficiency in Florida’s legal aid community.

The Access Subcommittee has worked closely with The Florida Bar Foundation and its grantees on the following business process improvement initiatives:

*i. Legal Aid Program Capacity Building*

The Seyfarth Shaw law firm has begun using its SeyfarthLean methodology, which borrows from Six Sigma and other management techniques to benefit nonprofits. The SeyfarthLean methodology used with the firm’s corporate clients has been adapted for the legal aid community. Using process mapping, analysis, and metrics, the work results in streamlined intake and case management processes when applied to legal aid organizations. In order to expand its process improvement efforts for legal aid, SeyfarthLean piloted a “Train the Trainer” program in Minnesota where 20 legal aid program learned to use many Six Sigma tools such as process mapping and root cause analysis.<sup>14</sup> The Access Subcommittee, along with The Florida Bar Foundation will continue to monitor this program and gather information that could be applicable to Florida providers.

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<sup>14</sup>“These days, many companies operate in a Lean Six Sigma environment, and they expect their legal departments to follow suit. Because of this, in-house counsel may be more familiar with Six Sigma concepts than their law firm counterparts. Thus, in-house counsel too has the potential to use process improvement expertise to help legal aid organizations operate more efficiently. Teaching process improvement to legal aid organizations presents an innovative and interesting way for in-house counsel to do pro bono work and invest in their communities.” Allegra Nethery, firm-wide Pro Bono Partner, Seyfarth Shaw and President of The Chicago Bar Foundation Board of Directors. <https://medium.com/rethink-the-practice/make-2016-the-year-we-close-the-justice-gap-5f087704d307#.k66ax5xzt>

ii. *Corporate Pro Bono Business Process Improvement Project*

The Florida Bar Foundation and one of its grantees have entered into an agreement with an international corporation<sup>15</sup> to provide a *pro bono* business process analysis of the grantee’s intake system. It is expected that the analysis will be completed by the end of summer 2016. Members of the Access Subcommittee will observe and engage with the corporate and grantee process teams. The goal is to observe the specifics learned in this particular BPA process and determine if there are ways to generalize that information to benefit other legal aid organizations and make the intake process more efficient and streamlined.

4. The Statewide Online Triage Gateway Pilot

The Access Subcommittee, after extensive research and analysis, proposed the development of a statewide online triage system that identifies and recommends the best existing civil legal resource for users based on variables such as location, income, language, and other related factors. The statewide Online Triage Gateway Pilot (Pilot) and the potential for a statewide online triage system are responsive to the charges to the Subcommittee.<sup>16</sup>

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<sup>15</sup>The Agreement requires that the grantors name not be available for public distribution until after completion of the project, as the success of business process analysis is dependent on the willingness and commitment to change at every level of the nonprofit entity involved.

<sup>16</sup>Please see page 6-7 of the Access Subcommittee Final Report 2 for historical and background information about the online “triage” system: <http://www.flaccessstojustice.org/wp-content/uploads/2016/06/ATJ-Access-Subcom-Final-ADA.pdf>

On April 7, 2016, members from the Access Subcommittee presented detailed information regarding the Pilot to the Supreme Court. By letter dated April 13, 2016, The Supreme Court communicated its appreciation for continued development of the Pilot.<sup>17</sup>

The Court appreciates the work of The Florida Bar Foundation and the Florida Justice Technology Center. While we recognize that this is a pilot project and all of the details have not yet been resolved, the Foundation and Technology Center, in compliance with all requirements of The Florida Bar, should include not only lawyer referral but also FloridaLawHelp.org, particularly as it relates to consumer financial counseling. The Court also encourages the Foundation and Technology Center to incorporate the Florida DIY efforts into the triage gateway expansion plan.

Furthermore, The Florida Bar Foundation received permission from the Florida Attorney General to support the Pilot with settlement funds previously allocated to the Foundation. The Foundation will serve as the fiscal agent on the project. Additional roles and responsibilities will be further defined by a Memorandum of Understanding between the Florida Justice Technology Center and The Florida Bar Foundation.

### ***Further Development and Research***

Extensive research concerning the implementation of the Pilot remains to be done.

The Pilot will ultimately provide its users with information regarding self-help forms, legal services providers, lawyer referral services,

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<sup>17</sup>See Appendix D in the Access to and Delivery of Legal Services Subcommittee Final Report: <http://www.flaccessstojustice.org/wp-content/uploads/2016/06/ATJ-Access-Subcom-Final-ADA.pdf>

voluntary bar association projects, law school clinics, and special compilations of guidance in particular areas of the law (e.g., bankruptcy or appeals). The FJTC is conducting a survey on the existing resources that are most helpful and best-maintained, and on potential unmet needs. Currently, the legal field is undergoing technological advances that are changing at a very fast pace. Thus, constant research is required in order to have the best technological tools available for Floridians to have meaningful access to the civil justice.

Closing the justice gap requires the delivery of information and services. The Online Triage Gateway system will identify a consumer's legal needs and, based on a variety of other inputs, present possible sources of information and help. The resources include self-help forms, links to information about common types of problems (e.g., eviction, child support, foreclosure, and bankruptcy), and links to sources for legal advice.

Further development is needed in training initiatives. The Access Subcommittee also notes that it is necessary to monitor best practices as they are developed nationally. It is the Access Subcommittee's presumption that many of these best or evidence-based practices already appear in the Access to Justice Knowledge Base. However, it is important to continue to add to the Knowledge Base; accordingly, the Access Subcommittee urges members and staff alike to continue bringing pertinent information, cutting edge research, and innovative practices to the attention of the Commission.

### ***Recommendations***

The Access to and Delivery of Legal Services Subcommittee recommends that the Commission provide a forum for discussion among the judicial, legislative, executive branches, the civil legal services and *pro bono* community, leaders of The Florida Bar, funding sources, the business community, and other interested stakeholders, about issues affecting access to civil justice for disadvantaged, low-income, and moderate-income Floridians.<sup>18</sup>

The Subcommittee also recommends the inclusion of language from the Conference of Chief Justices and Conference of State Court Administrators Resolution 5, unanimously recommended for adoption by this Commission and approved for adoption by The Supreme Court as guidance in developing additional charges, particularly as it calls for supporting “the aspirational goal of 100 percent access to effective assistance for essential civil legal needs” and urging “Access to Justice Commissions or other such entities to develop a strategic plan with realistic and measurable outcomes.”<sup>19</sup>

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<sup>18</sup>Link to the ATJ Administrative Order: <http://www.flaccessjustice.org/read-the-administrative-order>

<sup>19</sup>Link to the Conference of Chief Justices and Conference of State Court Administrators Resolution 5: <http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/07252015-Reaffirming-Commitment-Meaningful-Access-to-Justice-for-All.ashx>



## C. Continuum of Services<sup>20</sup>

The Continuum of Services Subcommittee was charged to:

Consider and evaluate components of a continuum of services for the unrepresented, 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.

The Continuum Subcommittee created subgroups to research and address the various levels of the continuum of services spectrum. The Continuum Subcommittee and subgroups have met continually since their inception. Their initial work included:

1. Identification of a Continuum of Services Spectrum - The Continuum Subcommittee identified a "spectrum" along which self-represented persons should have access to specific services as they navigate the legal system. The beginning of this continuum of services spectrum includes access to assessments of an individual's needs and a determination of the resources available to meet those needs. Such an assessment should also be conducted later in the spectrum, including at the conclusion and post-resolution phases of a legal problem. Assessments should not be confined to legal needs, but should also take into consideration extra-legal issues such as housing, counseling, or personal safety.

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<sup>20</sup>Continuum of Services Subcommittee Final Report: <http://www.flaccessstojustice.org/wp-content/uploads/2016/06/ATJ-Continuum-Subcom-Final-ADA.pdf>

## 2. Addressing Unlicensed Practice of Law and Limited Scope

Representation - The complexities of the law and rules on unauthorized practices, and the significant consequences for their violation, cause many non-lawyers to hesitate in providing what would otherwise be a maximum level of service. There needs to be clarity on what activities specifically constitute the unlicensed practice of law. The Continuum Subcommittee discussed changing the rules pertaining to limited scope representation.

## 3. Identification of Outreach Tools

The Continuum Subcommittee identified local and statewide tools that should be used to reach self-represented persons seeking available resources.

## 4. Methods of Assessing Litigants' Needs

The Continuum Subcommittee studied methods of assessing an individual's needs in order to determine what resource(s) are appropriate. Assessments should not be confined to legal needs but should also take into consideration extra-legal issues.

## 5. Identification of Referral Resources

The Continuum Subcommittee researched and compiled a non-exhaustive list of resources and potential resources available in Florida and nationally.

### ***Further Development and Research***

#### 1. Florida Justice Technology Center

The Florida Justice Technology Center began to address the recommendation that it maintain and update a resources website by

adding content to the FloridaLawHelp.org website. While the FJTC and the Continuum Subcommittee noted the difficulty in developing a complete resource listing, the Continuum Subcommittee reiterates that it is critical for resource listings be complete with both specific legal and extra-legal services.

## 2. Do-It-Yourself Florida

The Continuum Subcommittee is following with interest the progress of DIY (Do-It-Yourself) Florida. At the direction of the Supreme Court, and in cooperation with The Florida Bar and Florida Court Clerks and Comptrollers, the Office of the State Courts Administrator is developing online interviews that will assist self-represented litigants as they navigate the court system and enable them to assemble pleadings and other documents suitable for filing either through the statewide electronic filing portal or in person at a local clerk's office.

## 3. Confidentiality

Consumers' sensitive information should not be compromised because they seek to use online access portals or other technological means to secure assistance. The Subcommittee encourages FJTC to work closely with technology and subject matter experts to ensure that as we try to help the public, we first "do no harm."

## 4. Civil Legal Assistants

Since the interim report, the Subcommittee has become aware of a study by the Licensing Committee of the Bar Admission sub-group of the Vision 2016 Commission. This group began studying and researching a possible rule for allowing the limited licensing of non-lawyers in Florida.

## ***Recommendations***

The Continuum of Services Subcommittee proposes that the full Commission prioritize the following:

- i. The Florida Justice Technology Center should:
  - a. Expand the scope of FloridaLawHelp.org<sup>21</sup> so that it is complete in its listing of all legal assistance opportunities available in Florida;
  - b. Go beyond its support of FloridaLawHelp.org and build in to the FJTC database non-legal resources so that clients receive all relevant resource information related to their legal matters; and
  - c. Continue its work to update, expand, and improve resources listings using protocols that ensure a strong and careful vetting of suggested resources whether through a “wiki” type of format or in any other way that would support the inclusion of credible and reliable helping resources for the public and its advocates.
- ii. Any resources developed by the FJTC or the Commission should not retain personal or identifying information of persons using the resources or links; data in pleadings or forms filled out by users should not be saved or retained; the FJTC and the Commission should take the utmost care to ensure safety and confidentiality of user information; and, overall, all information collected should be fully protected.
- iii. The Continuum Subcommittee should review the research done by the Vision 2016 Licensing Committee and make recommendations to the Commission regarding the issue of Limited Licensed Legal Practitioners, including a review and recommendation regarding the proposed rules of the Licensing Committee.

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<sup>21</sup> FloridaLawHelp.org provides information about organizations that provide free legal help to low and moderate income Floridians and it is administered by the Florida Justice Technology Center. <http://floridalawhelp.org/site-help>

## **D. Technology<sup>22</sup>**

The Technology Subcommittee was charged with examining ways to leverage technology in expanding access to civil justice for disadvantaged, low income, and moderate income Floridians. The Technology 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 Technology Subcommittee worked closely with the Florida Justice Technology Center.<sup>23</sup> The FJTC endeavors to develop technology products and services that will expand access to justice for those confronting civil legal issues. A priority project of the FJTC is the Online Gateway Triage Pilot in Clay County The Pilot, which is discussed in more detail within the report from the Access Subcommittee,<sup>24</sup> is an online system that, based on information provided by the user, will provide the individual with a list of available resources that may assist him/her with their issue.

The Technology Subcommittee will remain involved as the pilot project progresses and determinations are made as to statewide applicability. The Technology Subcommittee will continue to explore technology projects and initiatives that have potential for adoption in Florida. The Technology

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<sup>22</sup>Technology Subcommittee Final Report: <http://www.flaccessstojustice.org/wp-content/uploads/2016/06/ATJ-Technology-Subcom-Final-ADA.pdf>

<sup>23</sup>The Florida Justice Technology Center (FJTC) is a new statewide nonprofit dedicated to increasing access to justice through the innovative use of technology. <http://floridajusticetechnologycenter.org>

<sup>24</sup> Access to and the Delivery of Legal Services Subcommittee Final Report: <http://www.flaccessstojustice.org/wp-content/uploads/2016/06/ATJ-Access-Subcom-Final-ADA.pdf>

Subcommittee will also look at potential obstacles or barriers that may impede the implementation of potential technological solutions such as (1) costs associated with technology expansion, including but not limited to equipment, software license subscriptions, long-term support, maintenance and upgrade of these systems and software, staffing, space limitations, etc.; (2) initial and ongoing training; (3) awareness and promotion; and (4) differing technologies available and in use by potential providers of legal services and the potential customers of legal services.

Additionally, the Technology Subcommittee will follow the progress and successes of the American Bar Association Statewide Interactive Pro Bono Website project that a number of states are currently participating in; this will include an evaluation of the project and a recommendation to the Commission as to whether or not Florida should participate.

#### **E. Funding<sup>25</sup>**

The Funding Subcommittee's charge was to examine how available resources might be maximized and to 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 Funding Subcommittee has focused on the following initiatives:

##### 1. Legislative Funding

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<sup>25</sup>Funding Subcommittee Final Report: <http://www.flaccessstojustice.org/wp-content/uploads/2016/06/ATJ-Funding-Subcom-Final-ADA.pdf>

The Funding Subcommittee members researched and discussed Florida's legislative funding process. They also reviewed historic and present state-by-state comparative data on legislative funding for legal aid. Some members of the Commission recommended that any funding requests to the Florida Legislature should not necessarily be for lump sum funding for legal aid services, but rather should be for services, programs, or projects with a project plan including expected outcomes and return on investment. The Funding Subcommittee did not make any recommendations for legislative funding at this time.

## 2. *Cy Pres* Rule or Statute

The Funding Subcommittee found that 18 states have statutes or court rules providing for legal aid to receive class actions residuals. The Funding Subcommittee reviewed a synopsis by the American Bar Association Resource Center for Access to Justice Initiatives of the key provisions of all 18 states' rules or statutes<sup>26</sup> and the March 2014 Virginia Journal of Social Policy and the Law article titled "Class Action Settlement Residue and *Cy Pres* Awards: Emerging Problems and Practical Solutions."<sup>27</sup> Consumer class action attorney John Y. Yanchunis developed and presented a memorandum on *cy pres* awards and drafted a potential *cy pres* rule - Residual Funds to Named Organization - providing beneficiary options for further consideration. The Funding

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<sup>26</sup>Legislation and Court Rules Providing for Legal Aid to Receive Class Action Residuals, available at: <http://www.flaccesstojustice.org/wp-content/uploads/2016/01/Pages-from-August-18-2015-meeting-45-53.pdf>.

<sup>27</sup>[http://www.vjspl.org/wp-content/uploads/2014/03/3.25.14-Cy-Pres-Awards\\_STE\\_PP.pdf](http://www.vjspl.org/wp-content/uploads/2014/03/3.25.14-Cy-Pres-Awards_STE_PP.pdf).

Subcommittee recommended that the Commission consider a *cy pres* rule in Florida.

The Commission recommended to the Florida Supreme Court development of a specific proposal for a *cy pres* rule in Florida. The Supreme Court referred the matter to The Florida Bar's Civil Procedure Rules Committee, which was tasked with:

- a. Determining whether the proposal is procedural or substantive; and
- b. If it is determined that the proposal is procedural in nature, reviewing the language of the rule and determining if and where it should be placed in the Rules of Civil Procedure.

The Civil Procedure Rules Committee has been researching the question of whether a *cy pres* proposal is substantive or procedural.

### 3. Support of the Business Community

The Funding Subcommittee researched and analyzed options for increasing support from the business community for access to civil justice. The Funding Subcommittee concluded that the Commission should aim to increase awareness among business leaders of the value of access to justice and, in so doing, increase support by the business community of all the components of an accessible system, including legal aid.

#### ***Further Development and Research***

The Funding Subcommittee determined that increasing awareness of business community leaders about the value of access to justice requires development and implementation of a strategic outreach and education plan. Thus, the Funding Subcommittee is working in conjunction with the Outreach Subcommittee on a joint strategy.



The Funding Subcommittee foresaw two paths toward achieving the goal of increasing the business community's awareness of and support for the provision of civil legal aid, each of critical importance:

1. Develop a communications plan and specific messaging on access to justice (including the value of legal aid), with the business community being one of the key audiences; and
2. Determine what information about or from the business community the Commission might need and in so doing give both the Outreach Subcommittee and the Funding Subcommittee more materials with which to work. For this reason, the Funding Subcommittee suggested working in partnership with the Outreach Subcommittee in order to take a shared approach to information gathering and dissemination.

#### IV. NEXT STEPS

There is still much work to be done to ensure that innovative and creative methods are employed to enhance access to justice for the many thousands of vulnerable and underserved Floridians – including children, the elderly, persons with disabilities, veterans, domestic violence victims, human trafficking victims, and those with limited English proficiency. The following recommendation is designed to ensure continued progress in the Court’s access to justice efforts:

**The Commission recommends that the Supreme Court of Florida establish a permanent Florida Commission on Access to Civil Justice.** The Interim Report submitted to the Court in October 2015 addressed two essential questions: 1) What is the Florida access to civil justice gap? and 2) Who are the underserved Floridians?<sup>28</sup> By asking and addressing these questions during the first year, the Commission built the foundation upon which to begin identifying and implementing solutions to bridge the civil justice gap. In order to effectively bridge the gap, the Commission should be established in a permanent capacity.

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<sup>28</sup> Florida Commission Interim Report: <http://www.flaccessstojustice.org/wp-content/uploads/2016/01/Florida-Commission-ATJ-Interim-Report.pdf>