

DRAFT

2014 Access to justice report 3/10/2015

The Access to Justice Task Force was appointed by Chief Justice Maureen O'Connor on July 1, 2014. The task force was charged as follows:

- (1) Identify gaps in and obstacles to accessing the civil justice system in Ohio;
- (2) Review those entities established by other states to address access to justice issues;
- (3) Determine whether the creation of a Supreme Court operated or affiliated entity focused upon access to justice would assist in addressing or resolving the gaps in and obstacles to accessing the civil justice system in Ohio;
- (4) If the creation of such entity is suggested, present recommendations concerning the organizational structure, membership, and responsibilities of the entity.

In approaching our work, the task force was mindful of the challenges and complexity of providing recommendations for systemic change in a state as large and diverse as Ohio with 88 counties, urban and rural, and more than 700 judges. We examined the report and recommendations of the 2006 Task Force on Pro Se & Indigent Litigants to determine what had already been recommended, completed, or still needed to be addressed.

Our approach can be best explained with the following statement regarding the legal problems of the indigent:

There has been long and devoted service to the legal problems of the poor by legal aid societies and public defenders in many cities. But, without disrespect to this important work, **we cannot translate our new concern into successful action simply by providing more of the same.** There must be new techniques, new services, and new forms of inter-professional cooperation to match our new interest....There are signs, too, that a new breed of lawyers is emerging, dedicated to using the law as an instrument of orderly and constructive social change.¹ (Emphasis added.)

This was part of the address of Attorney General Nicholas deB. Katzenbach to the Conference on Extension of Legal Services, held on November 12, 1964.

What follows are recommendations that will require bi-partisan support and commitment from the general assembly, in cooperation with the organized bar associations, legal aid, law schools and lawyers. Money alone will not solve the problem. The need is vast, and the commitment to provide access to justice will need to be a continual focus with leadership from the Supreme Court if we are to improve the situation for civil litigants in Ohio.

¹ Houseman and Perle, "Securing Justice for All: A Brief History of Civil Legal Assistance in the United States," (Revised December 2013), p. 13.

BACKGROUND

During the Access to Justice Conference held in February 2013, Chief Justice O'Connor described how access to justice is a priority in Ohio, and stated: "It is imperative that the bench and the bar work together in these difficult financial times to maintain access to justice. It is also imperative that the challenges are met by not only addressing the funding but by also examining where efficiencies lie, where alternatives can be identified, [and] where solutions can be implemented...."

Subsequently, the Supreme Court of Ohio submitted a proposal to the ABA Access to Justice Commission Expansion Project and was awarded a grant by the American Bar Association Fund for Justice and Education. The funding has been used to create the Task Force on Access to Justice and to support its activities.

The task force is chaired by former Justice Yvette McGee Brown. The members are: Justice Judith French; Hon. Diane Palos, Cuyahoga County Domestic Relations Court; Hon. Rosemary Grdina Gold, Cuyahoga County Domestic Relations Court; John Holschuh, Jr., Partner at Santen & Hughes, and President-elect of the Ohio State Bar Association; David Alexander, Partner, Squire Patton Boggs; Angela Lloyd, Executive Director, Ohio Legal Assistance Foundation ("OLAF"); Richard Pogue, Partner, Jones Day; William Weisenberg, Consultant, Ohio State Bar Association; Karen Wu, Staff Attorney, Advocates for Basic Legal Equality, Inc.; and Timothy Young, Ohio Public Defender.

The issue of access to justice is not a new one. For decades, states have struggled with providing legal services to indigent people. In a real sense, Ohio led the country in creating the Ohio Legal Assistance Foundation ("OLAF") in 1994. The late Chief Justice Thomas J. Moyer, championed the creation of OLAF as a result of the 1991 Spangenberg Report, which found that only 17% of the civil legal needs of the poor in Ohio were being met.

There are 32 states with access to justice commissions. The task force looked closely at five – Illinois, Maryland, Tennessee, Texas and the District of Columbia. The task force also examined the civil legal services structure in Ohio, including its history, funding, and impact. The task force met four times over the course of 2014, methodically addressing the four-part directive issued by Chief Justice O'Connor.

Lessons learned from the 2006 Pro Se and Indigent Litigant Task Force

In 2006, then Chief Justice Thomas Moyer appointed a task force on pro se and indigent litigants. The task force issued a comprehensive report including 52 recommendations. Of the 52 recommendations, 22 have been implemented in whole or in part (Exhibit A).

In the review of the 2006 report, the task force noted that there were varying degrees of implementation. For example, the Court has adopted standardized Uniform Domestic Relations forms, encouraged effective pro bono projects, and provided training to court staff on how to assist pro se litigants. However, standardized forms remain elusive in other areas of the law, and even when there are standardized forms, local courts often adopt local rules that require different or supplemental forms than those approved by the court. Several members of the task force met with members of the Ohio State Bar Association Access to Justice Committee and other stakeholders to solicit input on access to justice issues. Suggestions include prioritizing the recommendations, identifying a mechanism or entity responsible for implementation of the recommendations, and collaborating with the private bar and legal community.

The work completed by the 2006 task force was an invaluable guide for our work and helped inform the recommendations we offer herein.

I. Identify Gaps in and obstacles to Accessing the Civil Justice System in Ohio

The barriers to accessing the civil justice system in Ohio can be classified as funding, structural, and cultural in nature.

FUNDING

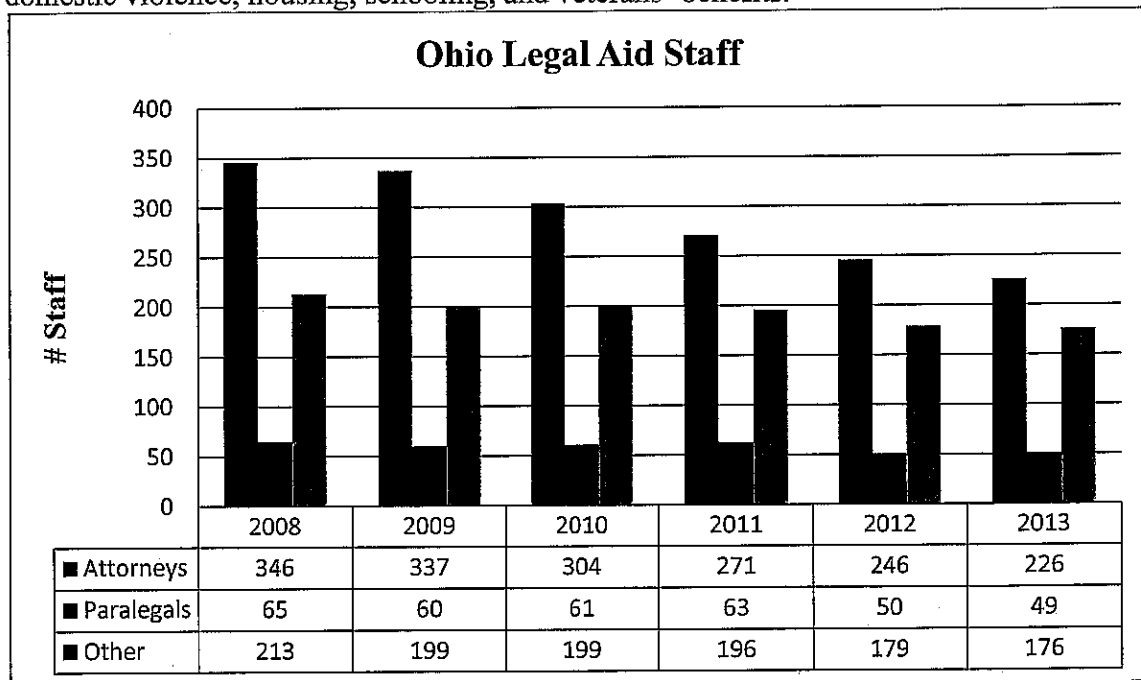
The primary barrier to access to justice is funding. While legal aid services have never been fully funded, the crash of the economy in 2008 further exacerbated the funding crisis. In Ohio, legal aid is funded by interest on lawyers' trust accounts ("IOLTA") and interest on trust accounts ("IOTA"); a designated civil filing fee ; by federal funds appropriated to the Legal Services Corporation; and, by private, charitable contributions. At present, legal aid does not receive any general revenue money.

Despite a commitment to access to justice for all, regardless of income, funding for legal aid in Ohio is at a seven-year low, causing the reduction of legal aid staffing and the closure of legal aid offices in Mansfield, Zanesville, Marietta, Lancaster, and Fremont. Due to lower interest rates, revenue from trust accounts has decreased 90% since 2007. This lack of funding is a trend seen throughout the nation. In 2013, funding for all legal aid programs in Ohio totaled \$39 million, to serve 2.1 million income eligible Ohioans. Due to these limited resources, legal aid turns away approximately three people for every one person served.²

Staff reductions have been similarly significant, with the Advocates for Basic Legal Equality/Legal Aid of Western Ohio losing over 35% of its staff and the Ohio State Legal Services Association also faring poorly. The following graph and chart shows the staff reductions in legal aid offices throughout Ohio since 2008.

² Source: Ohio Legal Assistance Foundation

The cases accepted by legal aid all pertain to basic human needs, such as protection from domestic violence, housing, schooling, and veterans' benefits.



STRUCTURAL BARRIERS: FORMS, RULES, AND COORDINATION

The legal needs of Ohio's indigent, low and moderate income population are not being met, despite there being almost 36,000 attorneys registered for active status in the state. The lack of standardized forms is one example of a structural barrier to accessing the civil justice system. There are standardized forms in connection with domestic relations, probate, and protection orders; however, many legal needs still are not addressed by the current forms. Further, with regard to language access, standardized forms require only one translation and leads to the efficient use of limited resources.

Lack of a statewide coordinated effort to utilize technology was also cited as a structural barrier. While many courts have online dockets and legal aid offices have their own websites, no one single resource exists to which Ohioans can be directed with regard to legal information, standardized forms, and guidance on navigating the civil legal system.

There are also no rules outside the Rules of Professional Conduct that address limited scope representation, also known as unbundled services, by Ohio attorneys. Limited scope representation is now being used as a means to address the needs of low and moderate income individuals by providing specific legal services at reasonable rates.

Pro bono is still an important part of the access to justice discourse. The Supreme Court has recently made rule amendments effective January 1, 2014, which provide CLE credit to attorneys for pro bono services performed through a recognized legal services

organization. Preliminary reports indicate that in its first year, 572 attorneys reported participating in a pro bono activity for CLE credit.

CULTURAL

Cultural barriers include the lack of knowledge regarding when an attorneys is needed, the role of lawyers and the judiciary, and lack of knowledge regarding the cost of legal services and what programs are available. Further, there appears to be lack of understanding by the public of the role that Ohio's legal aid programs play in the court system.

Despite research indicating unanimous support for the principle that Americans should have access to representation in civil matters, there is no extended public commitment to ensure that courthouses are open to our most financially vulnerable citizens.³

II. Review those entities established by other states to address access to justice issues

The task force undertook a careful review of the access to justice commissions in five states and studied their structure, mission, and demonstrated ability to increase access to justice - Illinois, Maryland, Tennessee, Texas, and the District of Columbia. While each commission has achieved success, the task force focused on specific, measurable ways in which the entities were able to increase access to justice, such as increasing funding, mobilizing pro bono projects to underserved areas, and ultimately increasing the number of people who were served. The task force is focused on practical solutions that can be implemented and achieve results.

Supreme Court Engagement

In looking at other state models, the one consistent factor was active engagement by the Supreme Court. The leadership from either the Chief Justice or a designated justice is key to creating systemic change and bringing other stakeholders to the table. For example, in Texas, with the leadership from the Court, the ATJ commission was able to create a funding stream through the victims of crime fund and later a general revenue allocation that is now \$17 million annually. In Massachusetts, the Supreme Judicial Court created a new *pro hac vice* rule whereby all fees went to support legal aid and the commission.

In New York, Chief Judge Jonathan Lippmann was instrumental in the implementation of the requirement that all applicants perform 50 hours of qualifying pro bono service before admission to the bar. New York law schools use internships to meet this requirement, the goal being exposure to pro bono at the start

³ OLAF PowerPoint – see minutes from August 1, 2014 task force meeting

of their career may encourage more pro bono services once they are licensed attorneys.

Michigan's Legal Help Program (MLHP) includes a website, Michiganlegalhelp.org, which helps pro se litigants access the proper forms and answers standard questions. In 2014, the website assisted 273 individuals a day with legal forms. The program also includes self-help centers that provide assistance to pro se litigants in civil matters. MLHP was created following a recommendation from the Solutions for Self-Help Task Force, established in 2010 by then Chief Justice Marilyn Kelly.

Illinois Access to Justice Commission

The Supreme Court of Illinois created an Access to Justice Commission in 2012, which focused on three areas: standardized forms; language access; and court guidance and training. The eleven member commission consists of appointees from the Supreme Court, the Illinois Bar Foundation, the Chicago Bar Foundation, the Lawyers Trust Fund of Illinois, and the Equal Justice Foundation.

The commission, with authority to develop and approve standardized forms, has a forms committee with various subcommittees working on several areas of the law, such as orders of protection, name change, expungement/sealing, and divorce. The forms and information sheets are developed, shared for 45 days of public comment, and once approved by the Commission's Forms Committee, are made available on the Illinois Supreme Court's website, where it is automated by Illinois Legal Aid online. The website states "Approved Statewide Forms The following forms have been approved for use by the Supreme Court Commission on Access to Justice and are required to be accepted in all Illinois courts."⁴ Currently, there are 12 forms available on the website.

The Commission also held listening conferences in each of the five appellate districts to determine additional access to justice priorities. Issues that were identified included providing legal services to the working poor and modest means clients; mentorship for young lawyers for pro bono cases; and CLE credit for pro bono work. While the commissioners have been actively engaged and have support of the Supreme Court of Illinois, there are also hundreds of volunteers who participate in the various projects.

Maryland Access to Justice Commission

The Court of Appeals established the commission 2008, which sunset on December 31, 2014. The Maryland Access to Justice Commission was tremendously productive; however, upon consideration, the decision was made to make the commission external to

⁴ Administrative Office of the Illinois Courts Standardized State Forms
<http://www.state.il.us/court/Forms/approved/default.asp> (last accessed March 10, 2015).

the judiciary. The Commission consisted of 45 members, including judges, legislators, representatives from the legal community, and members of the Executive Branch. The commission completed projects through the five following committees: Access & Delivery of Legal Services; Critical Barriers; Definitions, Standard & Awards; Public Education; and Self-Represented Litigants.

To educate and guide the many people that must use the court system without the assistance of an attorney, the commission created a series of short videos and tip sheets on the following topics:

“Should I Represent Myself?”

“Tips For Your Day in Court”

“Defending Against a Small Claim”

“Service of Process”

“Finding Legal Help”

The commission also assisted with the establishment of self-help centers in district (small claims/municipal) courts, including a virtual help center and a phone line.

The commission was instrumental in supporting legislation to continue funding from the Maryland legislature and also helped create a web page to the online pro bono reporting that Maryland attorneys complete each year. The page invites attorneys to make a voluntary contribution to a legal services organization and directs the attorney to the organization’s online donation page. In the 2012 Reporting Cycle, approximately \$70,952 in contributions were collected for the civil legal services providers in Maryland.

Tennessee Access to Justice Commission

The commission is a stand alone commission created by court rule with two court employees th With no source of recurring funds, the commission started with a budget of \$142,000 in FY 2015, most of which has been used to support projects such as plain language forms, a video regarding access to justice, and CLE events.

The commission has ten members with six advisory committees, with one commissioner serving as a committee chair and the rest of the committee is comprised of volunteers. The volunteers are recommended by legal aid executive directors and include attorneys, paralegals, and non-attorneys who can assist with projects, such as IT professionals.

1. Pro Bono – largest committee at 42 members
2. Education Committee (20) – focus on educating the judiciary, court clerks, and the bar on resources, issues (consists of attorneys, family resource center, judges, developmental disabilities, professors)
3. Faith-based committee (30)– consists of clergy, attorneys, Muslim representatives, rabbis. Focus is to collaborate with religious leaders, who serve

- vulnerable population. Step 1: Introduce to religious community and educate regarding legal issue spotting (triage)
4. Public awareness (20) –marketing and PR professionals- includes communications director of the court
 5. SRL (25+) – all forms, videos on how to navigate the court system, benchbook for judges
 6. Newest committee: mediation (either pro-bono or modest means mediation)

By including volunteers in the various initiatives, the commission was able to have a broad base of stakeholders involved in the ATJ Commission and gain public support. The Supreme Court of Tennessee is not involved in the membership of the committees.

The Texas Access to Justice Commission, created in 2001, has achieved success in securing legislative funding for legal aid, developing new funding sources in the form of bar dues assessments and a *pro hac vice* fee, and monitors the effectiveness of the statewide delivery system. Projects include connecting pro se litigants in rural areas with a pro bono attorney by video conferencing to handle simple divorce cases and providing a framework for corporate counsel to participate in pro bono activities.

The District of Columbia Access to Justice Commission is a stand alone commission created by court rule and funded by the Access to Justice Foundation, which exists solely to fund the salaries of the two staff members, and executive director and deputy director. As an independent entity, the commission engages in fundraising with its DC Raise the Bar Campaign raising over \$4 million in 2013. The commission has secured steady funding from the DC City Council for legal aid and undertook a comprehensive civil legal needs assessment to compare the legal needs in nine practice areas (consumer, education, employment, estate planning, family, public benefits, health/disability, housing, and immigration) with the network's capacity to meet those needs. The report identified the need in each practice area surpassed the resources available.

Based on the review of the various commissions, there emerged a recurring theme amongst all the entities: they each prioritized the commission's efforts based on the needs of the population. While funding is the pervasive barrier, there are also barriers that each commission overcome using technology and rule amendments as a means to close the justice gap. Employing these techniques while examining the barriers in Ohio, the task force formulated recommendations that could be implemented and measured for efficacy to determine if the legal needs of the poor are being met.

Determine whether the creation of a Supreme Court operated or affiliated entity focused upon access to justice would assist in addressing or resolving the gaps in and obstacles to accessing the civil justice system in Ohio

Over the years OLAF has distributed to Ohio legal aid societies over \$314.7 million to help enable them to provide civil legal services for the poor and disadvantaged; it has helped to make them more effective by its periodic reviews of their relative productivity;

and it was the moving force in the name of efficiency in spearheading movements to reduce the number of Legal Aid Societies from 19 to six.

The taskforce recommends that the Supreme Court work with an affiliated entity to lead access to justice initiatives in Ohio. We believe designating an outside entity to pursue these efforts over time removes any potential conflict and allows for seamless continuity in policy direction and program implementation. OLAF has significant expertise in this area and can be a great resource, convenor or the organization that takes on this work. We believe, however, this is a decision best left to the Court.

In addition, there needs to be funding and increased collaboration among the broad base of stakeholders, including bar associations, private attorneys, and community leaders.

The proposals herein are meant to increase collaboration and partnership amongst the different stakeholders, increase communication, reduce duplication of efforts, and streamline processes.

IV. RECOMMENDATIONS TO ADDRESS OR RESOLVE GAPS IN OR OBSTACLES TO ACCESSING THE CIVIL JUSTICE SYSTEM IN OHIO

1. FUNDING

Access to justice, access to our courts, and access to the resolution of a dispute before a fair, impartial and independent arbiter of justice are fundamental to a free and democratic society and instills in the citizenry an understanding and commitment to the Rule of Law. The establishment of justice is an enduring principle set forth in the preamble to the United States Constitution and refreshes us daily in our recitation of the Pledge of Allegiance when we conclude with the words "and justice for all."

Adequate funding of our justice system to insure access to justice is a societal responsibility and we recommend the Ohio General Assembly provide funds to help achieve access to justice in our state. At a bare minimum, we recommend funding for the restoration of 120 Legal Aid attorneys and their support staff laid off as a result of dramatically declining funds from Interest on Trust Accounts and other funding sources as a result of the recession. We also recommend funding for the re-opening of legal services offices in southeastern Ohio. (do we have information on how many people accessed these legal services office in Southeastern Ohio – just to give context to our recommendation)

The significant reduction in attorney positions and the closure of the Southeastern Ohio Legal Services (SEOLS) offices have resulted in significantly less service to Ohioans in need of essential civil legal services and a growth in self-represented litigants that have adversely impacted court administration and the timely disposition of disputes. The number of cases opened for SEOLS declined from 2008-2014 with a hiring freeze, loss of staff, and ultimate closure of three offices:

2008: 9886

2013: 5973

2014: 4311

The initial loss of resources begets further loss, as explained by Executive Director James Daniels's example:

"As a result of the office closures, travel time to serve the poor has increased significantly which cuts into time available to help. For example, before we closed our Marietta office, it was only 31 minutes or a 26 mile drive to appear in court to help a poor person in Caldwell, Ohio. Now, it is a 1 hour and 16 minute and 79 mile drive to appear in court to help a poor person in Caldwell from our Athens office."

The Marietta office served Washington, Morgan, Monroe, and Noble Counties closed its doors on January 31, 2014, after 33 years of operation. In 2013, the office assisted 1,088 families. The closest legal aid office is located in Athens, over 45 miles away.

The Task Force further recommends creating partnerships with law firms, foundations, law schools, and the business community to further support access to justice efforts. The Task Force especially encourages bar foundations to enhance their fundraising activities with an emphasis on access to justice programs and initiatives.

Recommendation

The task force recommends a general revenue appropriation for indigent legal services in Ohio.

Discussion

In Ohio, decreased funding for legal aid, which includes funds from IOLTA/IOTA, has resulted in legal aid office closures, staff layoffs, and the corresponding decrease in the amount of people served. In 2010, Ohio legal aid offices handled 86,541 matters.⁵ By 2013, that number dropped to 57,5936, despite an increase in the income eligible population for legal aid.

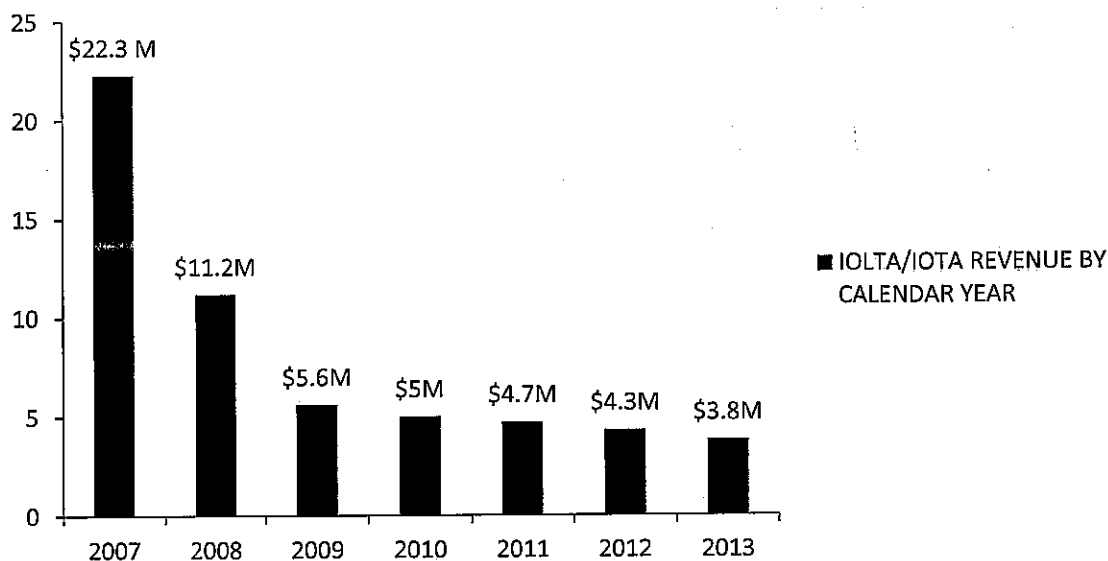
⁵ OLAF Presentation, Access to Justice Task Force Meeting, August 1, 2014.

⁶ *Id.*

Ohio's Qualifying Poverty Pop.	
2009	1,984,885
2010	2,053,978
2011	2,138,931
2012	2,216,093
2013	2,281,746

This decline in funding for civil legal aid is a nationwide phenomenon. In reviewing how other states have dealt with the decrease in IOLTA/IOTA fees, the task force recommends a legislative appropriation be sought in order to fund civil legal aid in Ohio.

IOLTA/IOTA REVENUE BY CALENDAR YEAR



In 1991, an Ohio Legal Needs Study known as The Spangenburg Report found that “more than 590,000 low-income household experienced problems between July 1989 and July 1990. Only 17 percent of these problems received legal attention while 83 percent went without legal help.”⁷ One of the recommendations in the 1991 report was that the Ohio General Assembly “should be encouraged to support the provision of free legal services to the poor through the creation of a legal services line item funded with general revenues.”⁸ The request for a legislative appropriation is neither novel nor unprecedented. According to the ABA, 31 jurisdictions provide funding for civil legal aid

⁷ *An Assessment of the Unmet Civil Legal Needs of Ohio's Poor (The Spangenburg Report)*, September 1991, p. 3.

⁸ *Id.* at p. 8.

by a legislative appropriation or funding from a portion of the court fees and fines collected.⁹ Ohio's legal aid continues to be funded by a grant from the LSC, IOLTA fees, grants, and donations; however, there has never been legislative funding for legal services. Ohio must follow the lead of other states to ensure access to justice for its citizens.

The Texas Access to Justice Commission's primary advocacy issue has been state funding for legal aid. In 2009, it helped secure the first-ever state appropriation for civil legal aid funding to address the shortfall from IOLTA. In 2013, a general revenue appropriation of \$17.6 million was made to civil legal aid programs. In addition, the Texas legislature passed a bill known as the Chief Justice Jack Pope Act, which increased the funds legal aid can receive through the state attorney general's civil penalties from a maximum of \$10 million to \$50 million in a given year.

The Massachusetts Legislature approved a \$15 million appropriation for its legal aid programs in FY 2015. While IOLTA provided \$31.8 million for legal aid in Massachusetts in 2007, it only generated approximately \$4.5 million in 2014. The Massachusetts Access to Justice Task Force is further recommending an additional \$30 million increase over three years, which would still not meet demand, but would begin to address the shortfall. The task force found that for every dollar spent on legal aid to keep people in their homes, the state saves \$2 in homelessness benefits.

Civil Legal Aid Generates Dollars and Stabilizes Communities

Civil legal aid programs generate funding in communities by securing federal grants to help fund their operations; by assisting clients in securing federal benefits; and, increasing federal, state, and local tax revenues. In 2010, Ohio's legal aids' activities generated \$5.6 million in total tax revenue.¹⁰ There is a 115% return for every dollar invested in legal aid.¹¹ Studies consistently show that investing in legal aid has a positive economic impact.

Legal aid provides a framework within which millions of federal dollars come into Ohio in the form of Social Security Disability, Medicare, and other income support. These income sources stabilize families, provide security, and stimulate economic activity in local communities when families spend their income support on housing, food and health services.

The task force recommends that the General Assembly provide funding to address access to justice for indigent civil litigants that will provide critical services to the state's most vulnerable population, including seniors and children.

⁹ "State Legislative Funding for Civil Legal Aid," ABA Resource Center for Access to Justice Initiatives, http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_1_egal_aid_funding_state_legislative.authcheckdam.pdf (last accessed March 4, 2015).

¹⁰ "Strength In Justice: Ohio's Legal Aids Energizing Our Economy and Building Our Communities," Ohio Legal Assistance Foundation (2010).

¹¹ *Id.*

2. *PRO HAC VICE* FUNDING FOR LEGAL SERVICES

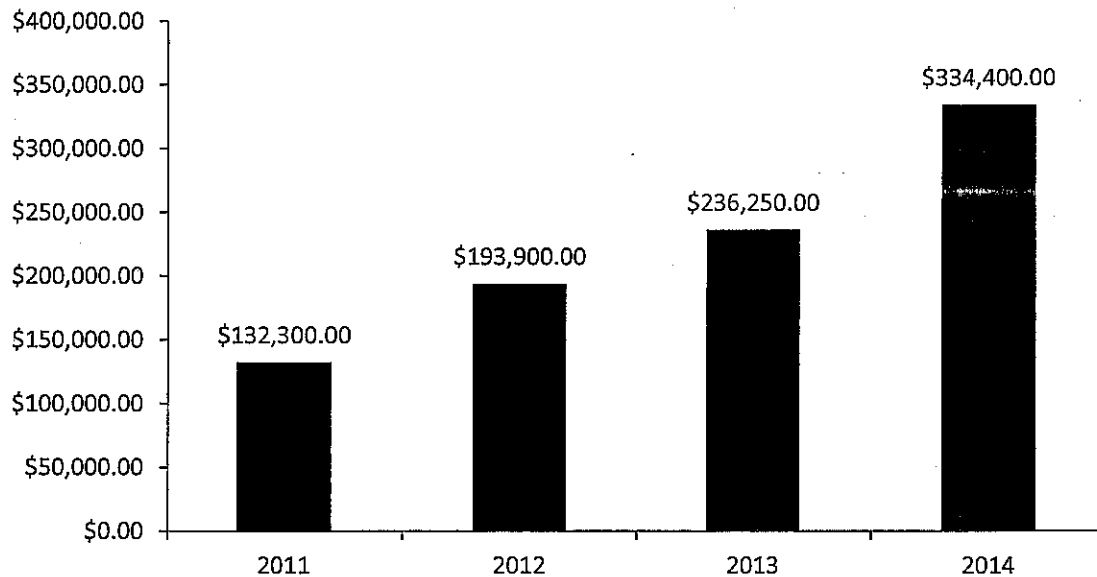
Recommendation

The task force recommends the Supreme Court increase *pro hac vice* fees and apply the additional amount for civil legal services for the poor.

Discussion

All out of state attorneys who wish to appear in an Ohio proceeding must register with the Supreme Court and pay an annual registration fee. The *pro hac vice* registration requirement has been in effect since January 1, 2011. The annual fee was previously \$100 and was raised in 2014 to \$150, with the out of state attorney permitted to participate in a maximum of three proceedings per calendar year. In 2014, 2,249 *pro hac vice* applications were submitted, and the Court collected approximately \$334,400.¹²

Pro Hac Vice Fees Collected in Ohio



The task force recommends the annual registration fee be increased, with a portion of the fees allocated to OLAF for disbursement to Ohio's legal aid programs. Currently, the *pro hac vice* fees are deposited into the Admissions Fund and used for matters relating to the admission of applicants to the practice of law, in accordance with Gov. Bar R. I, Sec. 14. With a fee increase, the Admissions Fund will continue to be

¹² Fifteen attorneys were granted waivers of the registration fee because they represented an *amicus curiae* in support of an indigent defendant in a criminal matter. Gov. Bar R. XII, Sec. 2(A)(4).

supported and additional funds can go to support critical legal services for Ohio's indigent population.

Nine states currently direct all or a portion of the revenue generated by *pro hac vice* registration fees to fund legal aid programs.¹³ For example, Missouri implemented its *pro hac vice* rule in 2002, initially charging a fee of \$100. In 2014, the Missouri Supreme Court raised the *pro hac vice* fee to \$410 per case, per court. Approximately \$270,000 of the revenue was directed to Missouri's legal aid programs.

The Pennsylvania Supreme Court requires a \$200 admission fee per case, with the payment going directly to the IOLTA Board. The Board uses the fees to fund its Loan Repayment Assistance Program (LRAP) to benefit attorneys who work in IOLTA funded legal services organizations. By court order, the funds must be used towards the LRAP program. The IOLTA Board administers the *pro hac vice* rule and collects the fees directly from the out of state attorneys. The amount collected from *pro hac vice* has declined over the past six years in Pennsylvania. In 2011, the Supreme Court of Pennsylvania increased the fee from \$100 per case to \$200 per case. There was a reported increase in 2011; however, the subsequent years have seen a decrease in the total amount collected from *pro hac vice* fees, as illustrated below:

FY 2010	\$260,000
FY 2011	\$413,000
FY 2012	\$370,800
FY 2013	\$338,800
FY 2014	\$270,000
FY 2015	\$300,000 (projected)

Massachusetts implemented a *pro hac vice* registration rule effective September 4, 2012, with fees of \$101 or \$301 per case, depending on the court where the case is filed. The fees are collected by the Board of Bar Overseers and then distributed to the Massachusetts IOLTA Committee quarterly. Massachusetts also reported a loss in *pro hac vice* fees. For calendar year 2013, the IOLTA Committee received \$232,191, and \$193,098 in 2014.

The task force recommends that the Supreme Court consider increasing the *pro hac vice* registration fee and have a portion of the fees directed to legal services. These proceeds can serve as a steady funding source for legal aid programs, and have been utilized by other states to support important programs, such as loan repayment assistance for attorneys working in legal aid. [Comment: Perhaps these funds can be applied to the

¹³ ABA Resource Center for Access to Justice Initiatives, "Pro Hac Vice Funding For Legal Services," http://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/2013/05/nat_1_mtg_of_accesstojusticecmnnchairs/ls_sclaid_atj_pro_hac_vice_revised.authcheckdam.pdf (last accessed March 6, 2015).

other recommendations in the report, such as support of a statewide civil legal resource website or staffed self help centers?]

3. Implement an Opt-Out Fee for Attorney Registration

The task force recommends that the Supreme Court consider implementing an “opt-out” fee in the biennial registration of attorneys, which can be directed to fund civil legal services. According to the ABA Resource Center on Access to Justice, approximately 22 jurisdictions include either “opt-out” or “add-on” fees to the attorney registration, with the additional monies going to the states legal services program. Massachusetts, with 42,483 attorneys, raised \$1.1 million with a \$51 opt-out on the attorney registration fee form. California, with 159,824 attorneys, raised \$878,000 with a \$100 add-on option, with clear instructions for paying or not.

Funding legal services is a responsibility of all Ohioans. Providing attorneys with an option for directing fees to legal services can serve an important function for raising awareness regarding the legal needs of the poor.

4. Create a Supreme Court Access to Justice Director position as a Liaison with a Sustained Focus

The task force recommends that the Supreme Court hire an Access to Justice Director. The director would serve as a liaison to the affiliate organization designated by the Court as the access to justice entity. The ATJ Director would also work with the court’s various committees and administration to ensure an access to justice lens on new policies and rules much like a budget impact statement currently used by the general assembly. This would ensure that a policy or rule does not inadvertently have a disparate impact on access to justice on indigent civil litigants. The Director will also work with the Language Services Program on ATJ efforts. This position can be funded from the filing fees collected from the Supreme Court, which generates approximately \$120,000 annually.

This recommendation is based on two very successful commissions – Illinois and Maryland, which recently decided to create access to justice departments at the Supreme Court level. When the Illinois Access to Justice Commission was created in 2012, the commission consisted of volunteers and an Executive Director employed by the Chicago Bar Foundation. In 2014, the Supreme Court of Illinois announced the creation of a Civil Justice Division within its administrative structure with the purpose of “supporting the Court’s multidimensional initiatives to improve access to justice throughout the state.” As a result of this change, the assistant director of the Civil Justice Division is the court’s chief liaison with the Commission.

The Maryland Judiciary created an Access to Justice Department. The executive director of the Maryland Access to Justice Commission became the director of the department, which will continue to support and advance access to justice initiatives within the judiciary. The department also includes the Court Interpreter Program and will collaborate with external access to justice entities. The Maryland Access to Justice Commission sunset on December 31, 2014, and a new entity has yet to be created.

4. Development of an Access to Justice Impact Statement

Developing an access to justice impact statement to be filed with any new proposed rules or policy changes. Such a statement will clarify how a new proposal might impact access to justice.

TECHNOLOGY

5. In order to address structural obstacles to access to justice, the recommended entity is encouraged to consider the development and maintenance of a state-wide website devoted to providing free and accurate legal information to Ohio residents who find themselves in the civil justice system. Other states have committed the time and resources necessary to develop such web sites, resulting in measurable positive increases in access to justice in those states. Using the State of Michigan's "Michigan Legal Help" website (www.MichiganLegalHelp.org) as an example, the Ohio web site would include self-help tools in the areas of family law, protection from abuse, housing issues, consumer debt collection, and expungement of criminal convictions or juvenile adjudications. It would also be a central clearinghouse for easy to find information on all courts in Ohio with direct links to the court's individual web sites where the public and Legal Aid or pro bono attorneys can find court rules and forms, hours of operation, directions, etc. Finally, lists and descriptions of local community service organizations, Legal Aid offices, and bar associations could be accessed from the web site to assist people needing legal representation.

Development of the website will require leadership by the Supreme Court and collaboration with courts, bar associations, and the legal aid community. This would likely be an expansive and long-term effort as all of the courts in Ohio's 88 counties would need to participate and contribute to the information on the web site. Unfortunately, not all of Ohio's courts are presently at equal levels of technological development (which includes on-line dockets, on-line access to forms, and e-filing). Therefore, the Supreme Court's leadership and assistance will be crucial in helping Ohio's individual courts achieve these recommended goals.

A. Self Help Tools (for people to handle simple civil legal matters themselves)

The recommended website should allow anyone to find articles with FAQs on specific areas of the law and toolkits to help someone prepare to represent himself in court. There could also be videos or podcasts describing the different areas of the civil justice system and how to navigate them without an attorney. These short videos could be developed by law students or legal aid organizations. It is important that the information be stated in simple, sixth grade level language and be easy to follow and understand. Is Tenn. A good example of this? Isn't that what they do? If so, we should say that here.

B. Remote Access to Courts and forms

A state-wide website could also provide access to court information and forms. Providing this information on-line would assist pro se litigants, court staff, legal aid attorneys as well as pro bono attorneys who have difficulties traveling to multiple courthouses to obtain this information. Information on each county's local court rules, access to on-line dockets, courthouse directions, and hours of operation could be included. It could also include downloadable [and standardized] court forms relating to a wide range of substantive areas including family law, landlord-tenant law, and consumer debt collection.

C. Links to local community service organizations, Legal Aid, and bar associations for assistance with legal matters

In this area of the website, links could be provided to lawyer referrals, self-help centers, and community service providers. Through these links, Ohioans involved in the civil justice system would be able to locate resources within their community to help them evaluate the complexity of their particular legal issue and determine whether they need a lawyer to help them navigate the civil justice system. The lawyer referral section of the website can include links to both local legal aid organizations and bar association lawyer referral numbers. The links for self-help centers can direct people to local court resources able to review pleadings or answer questions regarding whether an attorney is necessary in a case. The links for community service providers can be organized geographically by county and include everything from the local Department of Job and Family Services Office to the local, nonprofit domestic violence shelter.

Through a unified, state-wide website, Ohioans struggling to achieve justice in our civil court system can access the fullest array of resources without having to expend unnecessary dollars or time to drive to a court house or to independently evaluate the value of possible legal help. Other states have undertaken similar efforts and achieved appreciable increases in access to and satisfaction with their civil justice system. Ohio should endeavor to join those states that have successfully harnessed such technology to more widely open the court house doors.

ALTERNATE LEGAL SERVICES

6. Self-Help Centers

The task force recommends the judiciary review Self-Help Centers as a means to respond to the unmet needs of those who are unable to afford legal services. The Franklin County Municipal, through the use of a special assessment fund, will launch a Civil Legal Self-Help Center in Fall 2015. The center will be staffed by one attorney and offer information to pro se litigants. Services will include assistance with completing forms, answering questions regarding the court system, and making referrals when necessary.

The Maryland Judiciary initiated a self-help center program to assist with domestic and juvenile matters. The centers are staffed with a combination of court staff, contracted private attorneys, contracted legal services providers, and some volunteer attorneys.

In 2014, the Maryland centers assisted 49,082 pro se individuals with domestic case issues in FY 2014. In addition to operating during court hours, the self-help centers are open two evenings a month from 6 pm to 8 pm, using meeting rooms in the local public library. By partnering with the public library, the self-help center has been able to offer extended hours and reach the “working poor who are unable to pay for legal services.”¹⁴

Counties are required to track demographic and statistical information from individuals they serve to provide the judiciary with a record of who is being served and identify trends or need for services. Information such as assistance type, income level, education, race, and gender provide a portrait of the users. Courts determine the criteria for accessing the services. Out of the 24 counties with self-help centers, 8 counties limit access to those who are income-eligible for legal aid.

Self-Help Centers provide limited legal services for pro se litigants. Services include assistance with completing forms, answering questions about legal problems, and preparing for trial.

These Maryland centers were evaluated for their effectiveness in providing services satisfactory to clients, increasing the user’s knowledge of the judicial system, and removing barriers to accessing the justice system. The study revealed the following:

- a) SHCs are used heavily with most centers running at or near full capacity.
- b) Client satisfaction rate of SHCs is high, regardless of region, demographics, case type or services provided. Criteria included whether the client’s questions were answered, if the client experienced a long wait time, and whether the experience increased their trust in the judicial process.

¹⁴ Brewer, Sandy, “Howard County Circuit Court’s Self-Help Program Growing by Popular Demand,” Justice Matters, Vol. 13, No. 1, Winter-Spring 2010.

- c) Positive impact on court procedure: court administrative staff reported that SHCs have a positive impact. For example, pro se litigants file more complete paperwork and gain a better understanding of the law.

7. Unbundled Legal Services (Limited Scope Representation)

The task force recommends promoting the use of limited scope representation, also known as unbundled services, as a means of providing access to justice. While Rule 1.2 (c) of the Ohio Rules of Professional Conduct states, “A lawyer may limit the scope of a new or existing representation if the limitation is *reasonable* under the circumstances and communicated to the client, preferably in *writing*,” limited scope representation is not otherwise addressed in Ohio’s rules of practice.

The task force recommends that the rule be referred to the rules committee for a more definite statement of what constitutes “reasonable”. The taskforce, based on anecdotal comments from lawyers, believe that a more definite statement of what is permissible under this rule, will encourage lawyers to assist litigants who only need limited representation. We also recommend continuing legal education courses and Judicial College courses developed to educate attorneys and the judiciary regarding limited scope representation and how to ethically provide unbundled services.

There are several states that have addressed limited scope representation in their statutes or rules of procedure. In Maryland, the Court of Appeals adopted amendments to its rules of civil procedure to permit attorneys to enter an appearance limited to participation in a discrete matter or judicial proceeding. When filing the notice of appearance, the attorney is required to attach an acknowledgment signed by the client that sets for the purpose and scope of the representation.¹⁵ Further, once the attorney has completed the services outlined in the agreement, the rules of civil procedure allow for the attorney to withdraw by filing a notice of withdrawal.

Florida’s Family Law Rules of Procedure has several provisions regarding limited scope representation, including one that requires that pleadings filed by pro se litigants and prepared with the assistance of an attorney must contain a certification that the party received assistance from an attorney.

In Georgia, a firm called The Justice Café offers limited scope services in criminal law, juvenile law, and family law at a rate of \$75 per hour. Among the services listed on its website include negotiation, document drafting and review, such as QDRO, parenting plan, child support worksheet, and legal representation at court hearings. Limited scope representation can provide a means to assist individuals with accessing the justice system in Ohio. Clarifying an attorney’s ability to ethically provide limited scope representation, and an attorney’s ability to withdrawal after those services are completed, will offer a

¹⁵ Maryland Rules of Procedure, Title 2 – Civil Procedure – Circuit Court, Rule 3-131.

framework within which pro se litigants will receive legal assistance, be better prepared for their legal matter, and less demands will be placed on court personnel.

8. Revising Ohio's License Requirements in Support of Military Spouse Attorneys

The task force, upon review of the Proposed Rule Revisions to Ohio's License Requirements In Support of Military Spouse Attorneys, dated October 8, 2014, recommends the Supreme Court consider the proposed rule to permit "qualified military spouse attorneys stationed in Ohio to continue careers while in Ohio due to military orders." By eliminating licensure barriers for military spouse lawyers, access to justice is furthered for military personnel and their families.¹⁶ As military spouse attorneys have unique skills and experience concerning military life, they are better equipped to serve clients who are in the military, either through paid or volunteer work. Many military personnel lack adequate resources to obtain legal services. Qualified military spouse attorneys, if given the opportunity to gain admission to the practice of law in Ohio, would be uniquely situated to assist the many Ohioans who are military personnel and their families.

9.

Fellowships and Incubator Programs to Employ New Attorneys

A growing number of Ohioans have no ability to procure legal representation in civil matters. At the same time, hundreds, and perhaps thousands, of recent law graduates, have been unable to obtain employment in the legal field. This current failure of professional and market forces to match potential legal capacity with desperate need for legal services warrants serious review, analysis and recommendations by a collaborative effort of Deans of Ohio law schools, the Ohio State Bar Association new lawyer's committee, representatives of legal aid organizations, and representatives of the judiciary. Once convened, this study group should make recommendations for potential new methods of: 1.) transition to practice for new lawyers; 2.) appropriate training; 3.) strategies for mitigating potential financial barriers to enhanced service to low income Ohioans; and 4.) greater integration of pro bono service with the transition from law school to law practice. Appropriate recommendations should be made to the recently created Ohio Access to Justice Commission [or Ohio Legal Assistance Foundation].

The Task Force invites consideration of other models including the lawyer trainee model commonly adopted in European Union countries and the Rutgers Law Associates Fellowship Program.

The Ohio State University Corporate Fellowship Program

Established in 2011, the OSU corporate fellowship program at the Moritz College of Law is the first of its kind in the country. Modeled after medical school internships and

¹⁶ Sahl,

judicial clerkships, the law school has partnered with corporations, which hire a law school graduate as a fellow for a 9-12 month period. The requirements for a corporate sponsor include providing a minimum salary requirement (ranging from \$57,500 - \$90,000 per year); providing a designated mentor for the fellow in the general counsel's office; the fellow must attend group or client meeting's to experience issues and discussions of the corporation's legal department; and opportunities to meet with leaders within the corporation.

As of March 2015, 62 positions have been made available through the program.

Cleveland-Marshall College of Law

The Solo Practice Incubator Program at Cleveland-Marshall College of Law provides new attorneys with a means of starting their own law practice with the guidance from the law school's faculty and experienced practitioners. The program provides office space with discounted rent, basic office amenities, and free secure wireless internet. Tenants are provided guidance in the practical management of their firms and their cases.

There are many types of incubator programs available. Law schools, bar associations, and legal aid organizations are establishing incubator programs to support new attorneys who intend to begin a solo practice and meet the needs of moderate and low-income individuals. These programs focus on training attorneys to handle client matters while building an economically sustainable practice.

There are approximately two dozen incubators currently operating throughout the nation. It is expected that the number will increase rapidly, as the model is an inexpensive way to provide a guided entrance into the legal practice for newly admitted attorneys.

Rutgers Law Associates Fellowship Program

Providing legal services to low and moderate income New Jersey residents at below-market rates, the Rutgers Law Associates Fellowship Program hires newly licensed New Jersey attorneys. The fellows devote two-thirds of their time to client matters, and the rest is spent participating in seminars and classes related to business development and management and professional responsibility. Funding to start the program included a \$100,000 gift to the law school intended to fund clinics specifically for this population.

The program, which began operations in 2014, provides new lawyers with training and an opportunity to practice in a collaborative setting, while also meeting a critical need of serving the portion of the population that is not income eligible for legal aid but unable to afford a private attorney. The fellows work under the supervision of an experienced practitioner to meet the needs of those unable to afford legal services. The firm charges a reduced fee of \$50 per hour and provides legal assistance in landlord/tenant disputes, divorce, consumer fraud, veterans' issues, and others.

During the first eleven months of the program, the fellowship undertook more than 100 matters for moderate or low-moderate New Jersey residents, generating more than \$115,000 in attorney fees. The majority of clients served by the program were referred by legal aid agencies or by the courts. Without representation from the program, these clients would have proceeded in their matters pro se. Many of the clients needed assistance with family court matters, but other practice areas addressed include consumer protection, education law, and employment discrimination. It is anticipated that as the program continues, the fellows will be able to cover their stipends (currently at \$30,000 per year) and malpractice insurance from the work generated from the firm.

Skadden Fellowship Program

Skadden, Arps, Slate Meagher & Flom LLP established a fellowship program in 1988 to commemorate the firm's 40th anniversary and as a way to acknowledge "the dire need for greater funding for law students who wish to devote their professional lives to providing legal services to the poor (including the working poor), the elderly, the homeless and the disabled, as well as those deprived of their civil or human rights."

With an initial fund of \$10 million to sponsor 125 fellowships over five years, the program has remained an important source of projects that highlight access to justice issues. Including its 2015 class, the Skadden Foundation has funded 733 fellows to work in the public interest, including representation for low-income tenants, access to mental health services, and systemic advocacy in education.

The stipend given each fellow is approximately \$46,000, with the foundation paying for healthcare and law school debt, if the law school from where the applicant graduated does not offer a loan repayment program for those who go into public interest work. Fellows work on a project of their design with a sponsoring organization. It is the firm's mission that through their efforts, Skadden Fellows increase and improve access to justice to those who are disadvantaged.

90% of all Skadden fellows have stayed in public interest. 100% of those who stayed in public interest stayed within their area of interest.

When interviewed by the New York Times about the firm's decision to begin the foundation, then executive partner Peter P. Mullen stated, "This will tend to contradict the view that the established bar has about large law firms, the view that we take from society and do not give back. We have been successful, and we have made money, and we have decided to put some of it back."¹⁷

10. Forms

The task force encourages the Supreme Court to continue to lead the effort in developing standardized forms.

¹⁷ Labaton, "Big Law Firm to Help Poor In Civil Cases," *New York Times* (June 8, 1988).

Conclusion

In identifying the financial, structural, and cultural barriers to accessing the civil justice system in Ohio, the task force recommends the consideration of these recommendations and a monitoring of the effectiveness of the initiatives implemented on an annual basis. Through increased funding, alternative legal services, and technology, Ohio can continue addressing the civil legal needs gap in a collaborative manner.