

# Action Plan for Justice

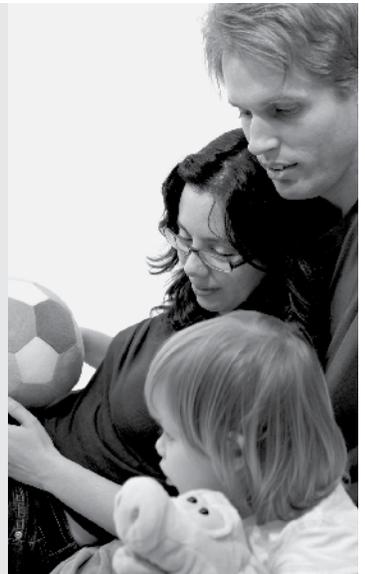
SUMMARY EDITION

A Report of  
**The California Commission on Access to Justice**

This Action Plan was developed at the request of Assembly Judiciary Committee Chair Dave Jones, and includes information and recommendations intended to assist all key institutions with responsibilities for ensuring a just and equitable judicial system in California – the Judicial Council, the Supreme Court, the State Bar, the Legislature itself, and other key statewide entities.

There were many organizations actively involved in the compilation of this Action Plan. The final product is a result of a significant statewide collaborative effort involving the Legal Aid Association of California (LAAC), the Public Interest Clearinghouse, the Judicial Council’s Task Force on Self-Represented Litigants, the State Bar’s Standing Committee on the Delivery of Legal Services (SCDLS) and the State Bar’s Legal Services Trust Fund Commission, as well as participants at the annual Legal Services Stakeholders Conference, held at the Administrative Office of the Courts in May of 2006.

*To these institutions and individuals, we owe a tremendous debt of gratitude.*



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### Chart of Recommendations

#### A. Funding/Additional Resources

1. Increase state funding for legal services through the Equal Access Fund.
2. Pursue comparability proposals to increase the yield on IOLTA Accounts.
3. Fund local pilot projects to provide a continuum of service, including full representation, for high priority needs.
4. Continue efforts to seek sufficient state funding to implement the loan repayment assistance programs (LRAP) for public interest attorneys.
5. Pursue strategies to create formal structure to use Cy Pres funds to support legal services statewide.
6. Promote statewide funding for the delivery of legal services to seniors, including consideration of the recommendations of the AB 830 Task Force.
7. Pursue increase in financial contributions by attorneys to legal aid programs and facilitate the collection and dissemination of those funds as appropriate.

#### B. Pro Bono

8. Increase statewide support for local and regional efforts to encourage more pro bono.
9. Develop ongoing judicial support for pro bono.
10. The Supreme Court, the State Bar and local bar associations should pursue the goals of ABA Model Rule 6.1 that strongly encourage attorneys to engage in pro bono work as well as to contribute to legal services programs.
11. Adopt ABA Model Rule 6.5 to facilitate attorney participation in advice and counsel clinics.

#### C. Improving Delivery of Legal Services to the Poor

##### Improving Delivery of Legal Services to the Poor – Rural issues

12. Establish minimum access guidelines to be used as baseline for funding considerations.
13. Prioritize funding of the loan repayment assistance and scholarship programs to expand the number of lawyers in rural areas.

##### Improving Delivery of Legal Services to the Poor – Fraudulent legal aid

14. Consider legislation to regulate the use of the term “Legal Aid.”

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**Improving Delivery of Legal Services to the Poor – Technology**

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15. Strengthen the statewide technology infrastructure to facilitate broader and more effective development of new delivery mechanisms.
16. Ensure that LawHelpCalifornia.org and other websites are treated as a core component of the state's legal services delivery system.
17. Support the expansion of the use of hotlines as an effective way to route client calls to the appropriate local legal services provider.

**D. Self-Represented Litigants**

18. Ensure staffed self-help centers are available in every county.
19. Pursue stable and adequate funding for self-help services.
20. Pursue strategies to remove unnecessary barriers to access for self-represented litigants.

**E. Language Access**

21. Guarantee qualified interpreter services in civil proceedings.
22. Develop policies and procedures to improve language access.
23. Reevaluate the system for recruitment, training, compensation and certification of court interpreters.
24. Evaluate the role of lawyers, bar associations, legal services programs, law schools and law libraries.

**F. Modest Means**

25. Evaluate and develop best practices for innovative delivery methods such as sliding fees and co-pays.
  26. Expand and support programs and services designed to encourage and assist private lawyers to serve modest means clients.
  27. Support organizations directly providing services to modest means individuals.
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# Action Plan for Justice

## A Report of The California Commission on Access to Justice

No principle is more essential to a well-functioning democratic society than equal access to justice. True access to justice ensures the long-term preservation of our core constitutional and common law values and fosters respect for the rule of law by all segments of society. Yet universal access remains an alluring and elusive goal rather than a contemporary reality. While the law increasingly permeates every aspect of our lives, not all members of society yet enjoy full access to the institutions in which the law is administered, interpreted, applied and enforced. This Action Plan is designed to help make that access a reality: to advance incrementally from a sound, principled but sometimes remote system of justice to a better one – more accessible, more effective and, ultimately, more just.

This Action Plan was developed by the California Commission on Access to Justice at the request of Assemblymember Dave Jones, Chair of the Assembly Judiciary Committee. It contains recommendations for each of the institutions with a key role in ensuring an effective and equitable legal system – the legislature, the courts, the State Bar, the Legal Aid Association of California, law schools, and the Access to Justice Commission itself.

In the last decade, the Access to Justice Commission has successfully partnered with the Judicial Council, under the visionary leadership of California Chief Justice Ronald M. George, as well as with the State Bar, the legal services community, concerned policymakers, self-help centers, law libraries and myriad other legal, judicial, and public entities in a unified effort to achieve equal justice. This collaboration has been central to the many successes described in the report, and has resulted in the development of California's strong infrastructure underlying the delivery of legal services.

While some recommendations in this report can be implemented immediately others are longer-term and will take extensive coordination between key stakeholders and a significant commitment to make them a reality. Given the number and scope of the recommendations, the Access Commission recognizes the need to establish priorities for their development and implementation.

Victoria, a young mother, came to her court's Family Law Information Center (FLIC) to give custody of her baby to her best friend. She had just learned that she was in an advanced stage of cervical cancer and was not expected to live much longer. The baby's father was deceased and the only living relatives were her parents, both drug addicts. She was extremely worried that if she passed away, her baby would end up with her drug-using parents or in foster care with strangers. The FLIC helped her file her documents, and the court granted her request. Approximately seven weeks later, she passed away but her baby was well-cared for with her friend.

## Breaking the cycle of violence

Cathy is a mother of two and a domestic violence survivor. When she went to legal aid she had been suffering from three years of beatings from an abusive husband and felt frightened and overwhelmed. The legal aid advocate helped her find safe housing and develop a safety plan, arranged for evaluation for one of the children who showed signs of autism, and got support services for the family. Meanwhile, represented by the legal aid attorney, she won sole custody of her children, secured child and spousal support and obtained \$9,000 in housing funds. Cathy and her children have now moved to permanent housing, the children are continuing with their counseling and treatment plans, and Cathy plans to return to school to become a pharmacist.

These Recommendations address all components of the legal services delivery system as well as relevant components of the justice system, guided by a set of Core Principles that are described in Part I. These Core Principles lay the foundation for the recommendations that follow in Part II, which are designed as part of a comprehensive plan that addresses all major barriers to access to justice.

Central to those principles is establishing and maintaining in each of our communities a full continuum of civil legal services that takes into account cultural and linguistic as well as economic factors. These include:

- legal education and prevention;
- brief advice and assistance, and self-help services;
- legal representation where needed, both to defend and assert legal rights;
- administrative, legislative and policy advocacy;
- community economic development; and
- representation of community organizations to enable them to fulfill their potential.

A great deal of progress has been made in the last several years to enhance equal access to justice for the poor, disadvantaged or otherwise marginalized members of our society, but much remains to be done to provide true access to justice in California.

### California's legal needs

California has by far the largest low-income population of any state. Since 1980, California's population has increased 40 percent while the number of Californians in poverty has increased by 60 percent.

Poverty affects vulnerable populations and women disproportionately. One of every five children in our state is poor. An even higher percentage of children live in poverty in Latino and African American communities. Poverty has also increasingly become a reality for working families, with 26 percent of California workers earning poverty-level wages.

Similarly, for those Californians living just above the poverty line even basic needs are beyond their reach. In 2000, approximately 7.5 million Californians had incomes higher than the maximum eligibility limit for federally funded legal aid and yet their incomes were lower than the state's median income.

Growing income inequalities, the failure of wages to keep up with inflation, the escalating cost of housing, and the widening income divide between the rich and poor, keeps many basic necessities beyond the reach of many in our state, even the middle class. The result is that the majority of Californians do not have the resources to obtain legal representation for the myriad legal problems affecting them every year, such as divorce, child support, child custody, domestic violence, loss of housing and employment, and discrimination.

In addition to economic barriers, other, less obvious, factors hinder access to the courts – cultural and linguistic impediments, lack of education, unfamiliarity with the court system, distrust of authority and feelings of social alienation. While the lack of access to justice is not discrete from other socio-economic problems faced by these populations, it often compounds other difficulties and increases the

sense of isolation and disempowerment. Effectively overcoming these barriers, together with addressing other structural and economic obstacles, requires a multi-faceted approach that employs a range of legal, support, education, advocacy and outreach services.

### **The Justice Gap**

As explained in the Commission on Access to Justice's 2002 study "The Path to Equal Justice," there continues to be a substantial "justice gap" between the total funding needed to truly meet the legal needs of California's poor and the total amount of resources available for civil legal services. The gap was estimated in that report as being \$384.4 million as of 2000 (or \$434.4 million in 2005 dollars) with the California delivery system able to address approximately 28 percent of the legal needs of the poor.

As of 2005, with resources increased to \$198,005,509, the updated "justice gap" figure is \$394.1 million – the gap between total resources available and what it would take to truly meet the legal needs of California's low-income community.

While California has made some important gains in terms of overall resources, legal aid programs are still not able to provide even a minimal level of legal advice and assistance for 67 percent of the legal needs of California's poor. Even for the one third of the legal need that is being addressed, it is often through brief services and advice, rather than with the full representation that low-income Californians often need and deserve.

### **The Continuum of Services**

Communities must have a continuum of services – a comprehensive, integrated system for the provision of legal services. The components of this continuum currently include:

- **Legal Representation and Related Services.** Legal services advocates and pro bono attorneys provide legal representation across the state to thousands of families facing critical legal problems. They also serve low-income clients by providing legislative advocacy, pursuing impact litigation, and conducting extensive community education.
- **Self-Help Centers.** Court-based self-help centers assist over half a million self-represented litigants navigate the court system, help the courts be more effective, and provide referrals to litigants for legal representation where appropriate.
- **Limited-Scope Legal Assistance.** The availability of limited-scope legal assistance has allowed many low and moderate-income people to access the courts by allowing individuals to have legal representation in crucial parts of their case.
- **Court/Legal Services Collaborations.** Collaborations and partnerships between courts and local legal services programs, bar associations and county law libraries have allowed for the expansion of self-help assistance.
- **County Law Libraries.** County law libraries are often the only access point to legal information resources for people whose needs may not fall within eligibility requirements for legal services and self-help centers, or who are unable to obtain representation.



## Elder safe from fraud

Mr. Davis, an elderly widower with health issues had taken out a high-interest loan to pay for the repairs his “friend” the contractor was supposed to do. Playing on their supposed friendship, the contractor not only grossly overcharged him for the work, but also ran up \$15,000 on Mr. Davis’ credit card. When Mr. Davis went to legal aid he was \$60,000 in debt. On a fixed income of Social Security and a modest union pension, he couldn’t make the house payments and was in danger of losing his home of 30 years. Legal aid staff identified the all-too-common scam by operators who prey on senior citizens to swindle them out of the equity in their homes. Legal aid sued to cancel one of the loans and had the other one reduced. Mr. Davis also got his credit card debt eliminated. His home was saved.

## Overview of Core Principles

These Core Principles provide a useful framework to examine the current state of California’s legal services delivery system and lay the foundation for recommendations to propose a comprehensive plan to address all aspects of the continuum of delivery of services.

[These Principles are based on California’s Vision and “Core Principles for Development of a Comprehensive Integrated System for the Provision of Legal Services” (“Core Principles”) developed by the Legal Services Coordinating Committee in 2001, together with the “Principles of a State System for the Delivery of Civil Legal Aid” (“ABA Principles”), adopted by the ABA in August 2006.]

### **Principle A. Provide Meaningful Access to Justice for Low Income and Vulnerable Populations.**

Access to justice is a fundamental right, and achieving true access includes the provision of legal services to the low-income and vulnerable populations in the state. While California has seen a number of successful innovations in the delivery of legal services, the funding of legal services for the poor in the state has remained woefully inadequate, and California lags far behind other states in funding legal services programs. Access is not meaningful when there remain such inadequate resources to meet the need.

### **Principle B. Provide a Continuum of Services in all Forums.**

A continuum of services is required to develop a comprehensive, integrated system for the provision of legal services. The components of the continuum include: legal representation and related services, self-help centers, the effective use of technology, limited-scope legal assistance, court and legal services collaborations, and county law libraries. Although these components have been strengthened and expanded in the last 10 years, much work remains to be done, especially in the critical area of legal representation.

### **Principle C. Establish Innovative and Responsive Delivery Systems, Cultivating the Leaders of Tomorrow.**

Innovative delivery systems must be developed in response to the needs of the client community and informed by the particular needs of underserved clients, in a manner that is effective and cost efficient, while designed to be evaluated and replicated where appropriate. Any responsive delivery system must take into account the diversity of the clients served; legal services attorneys and program leadership should reflect this diversity.

### **Principle D. Ensure Stable and Adequate Resources.**

All parts of the legal services delivery system must receive adequate funding to provide meaningful access for people without the financial resources to afford legal help.

**Principle E. Provide Fully Accessible Services throughout the State.**

A legal services delivery system should make legal services fully accessible and uniformly available throughout the state, particularly in rural areas, to limited-English speakers, and to other particularly vulnerable groups.

**Principle F. Conduct Client-Centered Planning.**

Legal aid programs engage in significant efforts to reach out to their clients to obtain their input in setting priorities for their provision of services. The judicial branch has similarly focused on the needs of court users by commissioning, in 2005, the report “Trust and Confidence in the California Courts: A Survey of the Public and Attorneys.”

**Principle G. Establish Expansive Partnerships to Ensure Leadership and Increase Resources.**

The system of delivery of legal services should be composed of partnerships between legal aid providers, community-based organizations, the judiciary and the courts, the private sector, all branches of government, and other stakeholders. Over the past nine years, the Access Commission, the Judicial Council, the State Bar, the legal services community, policymakers, self-help centers, law libraries and other key allies have partnered successfully to help create a strong infrastructure to support and coordinate the delivery of legal services in California.

**Principle H. Coordinate Local, Regional, and Statewide Planning and Evaluate Components of the Delivery System.**

The delivery system should engage in coordination of regional and statewide planning, and include the oversight and evaluation of all of the components of the system for the delivery of legal services.



At root, equal justice is simply the notion that law and the courts should be fair, even if life isn't.

*Hon. Earl Johnson, Jr., Associate Justice, California Court of Appeal, Second Appellate District; Speech at Opening Ceremony, National Equal Justice Library, quoted in 17 Saint Louis University Law Review 265 (1998).*

## Safe from abuse and homelessness

Martha, a woman with a disability, left her physically abusive partner. She could not afford her own place to live, and stayed with friends as long as she could. Eventually, she had to spend every night in city shelters. The legal services program in her city, working in collaboration with a homeless advocacy group and the Housing Authority, helped Martha obtain subsidized housing and access SSI benefits, which allowed her to pay her rent and meet her basic expenses.

# Recommendations: Action Plan for Justice

These recommendations are divided into a number of areas where challenges must be faced and overcome to provide effective access to justice.

## **Legal Services Funding and Additional Resources [Recommendations 1 through 7]**

To come closer to our goal of providing stable, adequate funding, uniformly available throughout the state we need to: increase state funding for legal services through the Equal Access Fund; pursue comparability proposals to increase the yield on IOLTA accounts; fund local pilot projects to provide a continuum of service, including full representation for high priority legal needs; continue efforts to provide sufficient funding to implement the Loan Repayment Assistance Program for public interest attorneys; and pursue increased financial contributions by attorneys to legal aid programs.

## **Increasing and Supporting Pro Bono [Recommendations 8 through 11]**

To increase the depth and breadth of pro bono involvement, we should: increase statewide support for local and regional efforts to encourage more pro bono; develop ongoing judicial support for pro bono; establish the principles of ABA Model Rule 6.1 to encourage attorneys to do pro bono work; and adopt ABA Model Rule 6.5 to facilitate attorney participation in advice and counsel clinics.

## **Increasing Resources in Rural Areas [Recommendations 12 and 13]**

Although no area of the state has enough resources to fully serve all who need legal services, rural communities are particularly stretched for resources. To increase resources in rural areas we should: establish minimum access guidelines to be used as a baseline for funding considerations and prioritize funding of loan repayment assistance programs to encourage lawyers to practice in rural areas.

## **Preventing Fraud by Organizations Claiming to be “Legal Aid” [Recommendation 14]**

Too many unscrupulous people use a name containing the term “legal aid” to mislead consumers and commit fraud on our state’s most vulnerable populations. To curb these abuses, the legislature should regulate use of the term “legal aid” in a manner similar to the regulation of the terms “paralegal” and “immigration consultant.”

## **Technology [Recommendations 15 through 17]**

To ensure that sufficient resources are allocated to the application of technology to the delivery of legal services, we should: strengthen the statewide technology infrastructure to facilitate broader and more effective development of new delivery mechanisms; ensure that existing websites such as LawHelpCalifornia are treated as a core component of the state’s legal delivery system; and design and implement a statewide hotline to route client calls to the appropriate legal services providers.



### **Assistance for Self-Represented Litigants [Recommendations 18 through 20]**

Self-help services are a key component of the continuum of legal services, and as such, we should prioritize: stable and adequate funding for self-help services, staffed self-help centers available in every county, and the pursuit of strategies for removing unnecessary barriers to access for self-represented litigants.

### **Expanding Language Access [Recommendations 21 through 24]**

Barriers to access to justice associated with language difficulties pose a significant threat to the judicial system. With 20 percent of California's population unable to speak English at the minimum level necessary for meaningful participation in a judicial proceeding, we should: guarantee the right to qualified interpreter services in civil proceedings; develop policies and procedures to improve language access; reevaluate the system for recruitment, training, compensation and certification of court interpreters; and evaluate the role of lawyers, bar associations, legal services programs, law schools and law libraries.

### **Improving Services to Modest-Means Clients [Recommendations 25 through 27]**

Modest-means Californians are often unable to meaningfully access our justice system, finding legal representation to be out of their financial reach while being ineligible for assistance from existing legal service providers. To provide true access to justice, our delivery system should develop, evaluate and expand best practices for innovative delivery methods: sliding fees and co-pays; programs and services designed to assist private lawyers to serve modest-means clients, including expansion of limited scope legal assistance; and support organizations directly providing services to modest-means individuals.

## Conclusion to Executive Summary

California is a national leader in innovative approaches to providing access to justice to its residents. Over the last 10 years, much has been accomplished by our legal services community. This progress is due, in great part, to the collaborative efforts of legal aid providers, local courts, the Judicial Council, the State Bar, the Access Commission, county law libraries, and many others.

However, the growth in the number of poor Californians and the decrease in the availability of basic civil legal services make the promise of equal access to justice an illusory one for far too many. Implementation of the important recommendations in this Action Plan will move California toward its mandate: achieving true access to justice for all Californians.