

Toward More Equal Access to Justice: The Tennessee Experience

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**TOWARD MORE EQUAL ACCESS TO JUSTICE:
THE TENNESSEE EXPERIENCE**

“With your help we will make Tennessee a model for the rest of the country.” - Janice Holder, Chief Justice of the Tennessee Supreme Court, announcing access to justice as the court’s number one strategic priority, December 2008.

By: Douglas A. Blaze and R. Brad Morgan***

I. Introduction

Courts, bar associations, and other professional leaders over the past several years have focused renewed attention on the need for greater access to justice for a larger number of Americans. The need has never been greater. Over sixty million Americans—one in five—qualify for federally funded legal assistance.¹ Studies show that those sixty million people by household average of 1.3 to 3.0 legal problems each year.² Many more low-income

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¹ LEGAL SERVS. CORP., BUDGET REQUEST FISCAL YEAR 2014 1, 8 (2014), *available at* <http://www.lsc.gov/sites/default/files/LSC/fy2014budgetrequest.pdf>.

² LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT STATE OF UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 15 (2009), *available at* http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

people who fail to qualify for legal assistance are still unable to afford a lawyer.

Led by newly created access to justice commissions and task forces at the state and federal level, a number of innovative programs and initiatives have been deployed. Almost uniformly those efforts have focused on four strategies: 1) increased funding for existing legal services programs; 2) increased pro bono work by lawyers; 3) reducing justice system barriers for self-represented litigants; and, 4) leveraging emerging technologies to achieve the other three.³

II. Initial Tennessee Initiative

Tennessee joined the effort in 2008 as a result of a confluence of initiatives of the Tennessee Bar Association (“TBA”) and the Tennessee Supreme Court. Under the leadership of then-TBA president, George “Buck” Lewis, the “4ALL” Campaign made access to justice programming the number one priority.⁴ In December 2008, a unanimous Tennessee Supreme Court announced that access to justice

³ See generally *Resource Center for Access to Justice Initiatives*, AM. BAR ASS’N, http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice.html (providing an overview of key issues in the ATJ initiative).

⁴ Johana Burkett, *George T. “Buck” Lewis Receives ABA Presidential Citation*, COM. APPEAL, Sept. 4, 2013, available at <http://www.commercialappeal.com/news/local-news/george-t-buck-lewis-receives-aba-presidential>, (The “Justice 4ALL” campaign was a collaborative effort initiated by the TBA to educate attorneys and other legal professionals across the state about the unmet legal needs of disadvantaged Tennesseans, and to encourage those professionals to support and participate in the effort to close the justice gap); see also Tenn. Supreme Court, *About the Tennessee Supreme Court’s Access to Justice Initiative*, <http://www.justiceforalltn.com/content/about> (last visited Apr. 13, 2015) (explaining priority).

was the court's number one priority.⁵ During early 2009, the court held a series of public meetings, each chaired by a justice, in public libraries across the state.⁶ The meetings engaged a broad range of stakeholders, policy makers, and members of the public in discussions of the needed work and creative solutions necessary to close some of the legal needs gap.⁷ As a result, the meetings fostered an improved understanding of the varied and complex nature of unmet legal needs in different areas of Tennessee.⁸

A. The Tennessee Supreme Court Access to Justice Commission

Following the public meetings, in April 2009 the court created the Tennessee Supreme Court Access to Justice Commission governed by simultaneously enacted Supreme Court Rule 50.⁹ Under Rule 50, the Commission was charged with developing an initial strategic plan consistent with the directives of the rule. Specifically, the court assigned the following responsibilities to the Commission:

- Encourage state and local bar associations, access to justice organizations, pro bono programs, judges, and court clerks across the state to promote and to recognize pro bono service by lawyers across the state;
- Encourage state and local bar associations, access to justice organizations, pro bono programs, judges,

⁵ TENN. ACCESS TO JUSTICE COMM'N, 2010 STRATEGIC PLAN 1 (2010), available at http://www.tncourts.gov/sites/default/files/docs/final_atj_commission_plan__appendices_2010.pdf.

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.*

⁹ TENN. SUP. CT. R. 50.

and court clerks across the state to encourage full and limited scope legal representation at reduced fees;

- Encourage the Alternative Dispute Resolution Commission and other groups to provide pro bono and reduced-rate mediation services to self-represented litigants and to litigants who, although represented, have modest means or who are pro bono clients;

- Address existing and proposed laws, rules, procedures, and policies that are barriers to access to justice for low income Tennesseans and to consider the role of community education and increased availability of technology in reducing these barriers;

- Develop and recommend initiatives and systemic changes to reduce barriers to access to justice and to meet the legal needs of 1) people who do not qualify for existing assistance programs but still cannot afford legal assistance, 2) people with disabilities that restrict access to courts and legal services, 3) members of language minorities, and (4) people whose legal needs may not met due to restrictions on representation by legal aid programs;

- Promote increased understanding of the importance of access to justice and of the barriers faced by many Tennesseans in gaining effective access to the civil justice system; and,

- Study and recommend strategies to increase resources and funding for access to justice in civil matters in Tennessee.¹⁰

B. Unique Attributes of the Commission

The approach adopted by the Tennessee Supreme Court was unique in several respects. First, in contrast to most commissions across the county, the Tennessee

¹⁰ *Id.* at § 2.04.

Commission consisted of only ten members.¹¹ Second, the composition of the Commission was exceptionally diverse in terms of background.¹² The court designed the Commission to provide new perspectives and involve new constituencies in the access to justice effort. The appointed commissioners included business leaders, general counsel of large corporations, religious leaders, bar leaders from both large and small firms, and law teachers. Third, the court provided financial support for the work by hiring a legally-trained Access to Justice Coordinator to provide staff support to the work of the Commission.¹³

Though the formal Commission was relatively small in size, the Commission decided at the outset to engage a large number of other people and organizations in the work of the Commission.¹⁴ For example, the initial strategic planning process was organized around eight committees, each chaired by a member of the Commission. The committees' membership, however, included a broad coalition of individuals and organizational representatives involved in access to justice in the broadest sense. Representatives of the legal service providers, bar associations, rural and urban lawyers from various practice settings, court clerks, judges, social service providers, and representatives from public libraries, served on the committees and numerous subcommittees of those committees.¹⁵

¹¹ TENN. ACCESS TO JUSTICE COMM'N (2010), *supra* note 5, at 4.

¹² *Id.* at app. C (roster of inaugural Commission).

¹³ *Id.* at 1.

¹⁴ The commission's approach was encouraged by TENN. SUP. CT. R. 50, § 2.03.

¹⁵ TENN. ACCESS TO JUSTICE COMM'N (2010), *supra* note 11, at 4-5, app. E (roster of all advisory committees).

These attributes, coupled with a receptive and supportive profession, have led to the ongoing success of the Commission and its partners.¹⁶

C. Strategic Planning

Strategic planning efforts have guided the work of the Commission since its inception. The Commission has structured that planning process to require ongoing review of progress on action items adopted as part of the plan and a revised plan and planning process every two years.¹⁷ As a result, the focus and work of the Commission can be divided into three phases to date, each phase defined by the applicable plan adopted in 2010, 2012, and 2014.

III. Phase One – Low Hanging Fruit

A. Planning Process

To develop the initial strategic plan, at the outset the Commission formed eight advisory committees, each headed by a commissioner. The advisory committees were:

- Community and Pro Bono Mediation;
- Court System;
- Education;
- Pro Bono and Attorney Involvement;
- Pro Se;

¹⁶ ABA RESOURCE CENTER FOR ACCESS TO JUSTICE INITIATIVES *Hallmarks of Effective Access to Justice Commissions*, ABA RESOURCE CENTER FOR ACCESS TO JUSTICE INITIATIVES (May 2014), available at http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_effective_atj_commissions_hallmarks.authcheckdam.pdf (Explaining that many of the attributes are recognized as essential to a truly effective commission).

¹⁷ TENN. SUP. CT. R. 50, § 2.01.

- Unmet Legal Needs Alternative Strategies;
- Unmet Legal Needs Disability and Language Barriers; and,
- Resources and Technology.¹⁸

“The Advisory Committees were charged with developing recommendations for the Commission's strategic plan.”¹⁹ Many of the advisory committees formed working groups. Approximately thirty such groups met during the summer and fall of 2009.²⁰ Many of those who participated in the Supreme Court public access to justice hearings, including a significant number of judges and clerks, participated in this phase of the work as well.²¹ In addition, the Commission held two meetings that specifically focused on the resources and technology available in Tennessee to address the civil legal needs gap.²²

The Commission also conducted a survey of court clerks regarding how the civil needs crisis affects their offices.²³ Another survey of legal service providers and others in the access to justice community was conducted prior to the annual statewide Tennessee Alliance for Legal Services Equal Justice Conference in September 2009. This survey asked for a description of the systemic barriers to access to justice in Tennessee.²⁴

“By December 2009, the Advisory Committees submitted their recommendations to the Commission and its staff.”²⁵ Due to the hard work of over one hundred

¹⁸ TENN. ACCESS TO JUSTICE COMM’N (2010), *supra* note 15, at 4.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.* at app. H.

²⁴ *Id.*

²⁵ *Id.*

advisory committee members, over seventy substantive recommendations were submitted for the Commission's review.²⁶ Some of the recommendations from the advisory committees were acted upon by the Commission and the Supreme Court, before the preparation of the final strategic plan.²⁷ Most notably, the Commission recommended that the court adopt a pro bono reporting rule and the court adopted a voluntary reporting rule in November 2009.²⁸ The Commission also recommended, with support from two different advisory committees, that the court adopt a new rule to create an emeritus licensure status to allow attorneys to provide pro bono legal services in Tennessee through an established not-for-profit bar association, pro bono program, or legal services program.²⁹

“The Commission held a strategic planning retreat in January 2010.”³⁰ The Commission worked to distill the over seventy substantive recommendations from its Advisory Committees into a more streamlined series of recommendations to the Supreme Court and an outline for future Commission activities.³¹

B. 2010 Strategic Plan

The final plan was submitted to the Court in April 2010 and released to the public in June 2010.³² The plan outlined four overarching goals:

²⁶ *Id.* at 5.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 5-6.

³⁰ *Id.* at 6.

³¹ *Id.*

³² TENN. ACCESS TO JUSTICE COMM’N, 2012 STRATEGIC PLAN app. D (2012), available at http://www.tsc.state.tn.us/sites/default/files/docs/final_atjc_2012_strategic_plan.pdf.

1. To involve more lawyers and law students in meeting legal needs so that the public is better served;
2. To provide greater educational opportunities and resources for policymakers, self-represented litigants, the community, lawyers, court personnel, and others;
3. To make the justice system more user-friendly; and,
4. To remove barriers to access to justice, including but not limited to disability, language, literacy, and geography.³³

For each goal, the Commission outlined specific objectives and actions to be taken over the two-year period governed by the plan.³⁴ For example, to increase pro bono efforts, the plan called for the Supreme Court to convene a pro bono summit of all the stakeholders to discuss and develop strategies to achieve that goal.³⁵ The plan also called for a comprehensive education campaign directed at judges, lawyers, and clerks, to help foster more user-friendly courts.³⁶ To accomplish the tasks and achieve the goals of the ambitious plan, the Commission reorganized its committee structure around the stated priorities.³⁷

³³ TENN. ST. CTS., *Access to Justice*, <http://tncourts.gov/programs/access-justice> (last visited Feb. 12, 2015). (All information regarding Tennessee Access to Justice was taken directly from TNCOURTS.gov.)

³⁴ TENN. ACCESS TO JUSTICE COMM'N (2012), *supra* note 32, at app. E.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 5 (the committees constituted to carry out the plan were Disability and Language Barriers, Education/Public Awareness, Faith-Based Initiatives, Pro Bono, Pro Se/Forms, Resources, and Technology).

C. Phase One Accomplishments

1. Pro Bono Summit

“The Supreme Court and the Commission sponsored a Pro Bono Summit in Nashville” in January 2011.³⁸ All five members of the Tennessee Supreme Court spoke and participated in the Summit.³⁹ “Bar association officers, law firm managing partners, rural practitioners, corporate counsel, deans of Tennessee law schools, law students, legal service providers, representatives from the state libraries, and other service providers” all participated in the event.⁴⁰

The Summit focused on increasing pro bono service performed by Tennessee attorneys, and included a range of panel discussions such as: 1) developing a pro bono clinic; 2) how to increase attorney pro bono at large law firms and corporations; 3) pro bono issues in rural areas; 4) involving law students in pro bono; and, 5) utilizing technology to reach more indigent Tennesseans.⁴¹ All sessions were recorded and made available online.⁴²

At the conclusion, all “[p]articipants completed pledge cards stating how they planned to increase pro bono in their practice.”⁴³ “New ideas and partnerships were formed as a result of the Summit, including coordination among law school pro bono programs” and proposals for uses of technology in the rural communities.⁴⁴

³⁸ *Id.* at 2.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 2-3.

⁴² *Id.* at 3.

⁴³ *Id.*

⁴⁴ *Id.*

2. Access to Justice Website

In November 2011, the Supreme Court and the Commission launched www.JusticeForAllTN.com to provide information both to the public and the bar.⁴⁵ The initial website included links for “legal help” to provide “information on how to find a lawyer, a glossary of common legal terms, links to court forms and plain language information on a variety of legal issues, including divorce, child support, housing information, healthcare, immigration, and mediation.”⁴⁶ One of the most popular tools on the site proved to be an interactive map of Tennessee’s 95 counties that directs users to county-specific contact information for legal aid providers, social service providers, governmental agencies and the court system.⁴⁷ The website also provides information for lawyers “ranging from how to volunteer with a legal aid provider or a bar association to a step-by-step guide for how to develop a pro bono clinic.”⁴⁸

3. Rule Changes

While the Commission was engaged in strategic planning, the Supreme Court was actively implementing a number of significant rule changes to encourage pro bono work and remove other barriers to greater access to justice.⁴⁹ The rules were supported and proposed by the Commission, the Tennessee Bar Association, the Tennessee Bar Foundation, the Tennessee Lawyers' Association for Women, and the Tennessee Association. Specifically, the court did the following:

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

- Revised Tennessee Supreme Court Rule 8, Rules of Professional Conduct 6.1 to add an aspirational goal of 50 pro bono hours per year for Tennessee lawyers;⁵⁰
- Adopted a new Tennessee Supreme Court Rule 8, Rules of Professional Conduct 6.5 permitting lawyers to provide limited scope advice;⁵¹
- Created new Tennessee Rule of Civil Procedure 23.08, which allows a court to distribute residual funds remaining from class action suits to programs or funds serving pro bono legal needs. The rule specifically references that funds may be distributed to the Tennessee Voluntary Fund for Indigent Civil Representation;⁵²
- Revised Tennessee Supreme Court Rule 21, Section 4.07(c) (Continuing Legal Education (CLE)) to increase the number of hours of CLE credit that lawyers may earn for the hours of pro bono legal representation they perform from one hour of CLE credit for every eight (8) hours to one hour of CLE credit for every five (5) hours of pro bono work;⁵³
- Revised Tennessee Supreme Court Rule 5 to allow judicial research assistants to engage in some types of pro bono work;⁵⁴
- Revised Tennessee Supreme Court Rule 43 and Rule 8, Rules of Professional Conduct 1.15 to make participation in the Interest on Lawyers Trust Accounts (IOLTA) program mandatory and to require comparability in rates paid on IOLTA accounts;⁵⁵
- Amended the rules governing multi-jurisdictional practice, Tennessee Supreme Court Rule 7, section 10.01

⁵⁰ TENN. SUP. CT. R. 8, RPC 6.1.

⁵¹ TENN. SUP. CT. R. 8, RPC 6.5.

⁵² TENN. R. CIV. P. 23.08.

⁵³ TENN. SUP. CT. R. 21, § 4.07.

⁵⁴ TENN. SUP. CT. R. 5(c).

⁵⁵ TENN. SUP. CT. R. 8, RPC 1.15 & 43.

(c) and Rule 8, Rules of Professional Conduct 5.5, to permit lawyers admitted in another jurisdiction to provide pro bono legal services in Tennessee following a major disaster and to allow attorneys authorized to practice in Tennessee as in-house counsel under Rule 5.5 to provide pro bono legal services in Tennessee through an established not-for-profit bar association, pro bono program, or legal services program,⁵⁶

- Revised Tennessee Supreme Court Rule 9, Section 20.11 to request that every attorney voluntarily file a pro bono reporting statement annually with the Tennessee Board of Professional Responsibility;⁵⁷ and

- Published a new rule for comment, Supreme Court Rule 50A, that would create an emeritus licensure status to allow those attorneys who have let their licenses become inactive to provide pro bono legal services in Tennessee through an established not-for-profit bar association, pro bono program, or legal services program.⁵⁸

IV. Phase Two– Leveraging Technology and Increasing Participation

A. Leveraging Technology

In its initial strategic plan, the Commission recognized that “[t]he enhanced use of technology such as websites, teleconferencing, email pro bono banks and remote access to courts could greatly benefit underserved populations, particularly in rural areas.”⁵⁹ More specifically the Commission articulated the needs to: (1) utilize technology to educate legal professionals and the public about existing resources; and, (2) leveraging technology to

⁵⁶ TENN. SUP. CT. R. 8, RPC 5.5 & 7, § 10.01(c).

⁵⁷ TENN. SUP. CT. R. 9, § 20.11.

⁵⁸ TENN. SUP. CT. R. 50A.

⁵⁹ TENN. ACCESS TO JUSTICE COMM’N (2012), *supra* note 34, at 10.

further the four primary goals communicated by the Commission in its Strategic Plan.⁶⁰

In subsequent plans, the Commission—with the benefit of the experiences of users of the early access to justice technologies—created a “disciplined approach” to “allow [the Commission] to place emphasis on the programs that have been the most effective, to discontinue spending resources on programs that have not been effective, and to use new technologies and the new information . . . gather[ed] to leverage existing programs and launch new programs where the need is the greatest.”⁶¹ The evolution of the use of technology in access to justice efforts is illustrative, and indicates the efficacy and efficiency that technology can have in the access to justice arena, particularly in geographic areas where needs and resources do not always share the same zip code.

As mentioned above, www.JusticeForAllTN.com—a user-friendly website—further the objectives described above through an innovative and effective dual purpose of providing information both to the public and the bar.⁶² Viewers who click “legal help” can find information on how to find a lawyer, a glossary of common legal terms, links to court forms and plain language information on a variety of legal issues, including divorce, child support, housing information, healthcare, immigration, and mediation.⁶³ Over the years, www.JusticeForAllTN.com has grown to include links and references to the other technologies that are being created and utilized in Tennessee. One such link is to OnlineTNJustice.org (“OTJ”), a project of the Tennessee Alliance for Legal

⁶⁰ See TENN. ST. CTS., *supra* note 33.

⁶¹ TENN. ACCESS TO JUSTICE COMM’N, 2014 STRATEGIC PLAN 8 (2014), available at https://www.tncourts.gov/sites/default/files/docs/final_2014_strategic_plan_and_appendices.pdf.

⁶² TENN. ACCESS TO JUSTICE COMM’N (2012), *supra* note 59, at 3.

⁶³ *Id.*

Services (TALS), the TBA, the Tennessee Supreme Court's Access to Justice Commission and the law firm of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC.⁶⁴

OTJ is a website that permits qualifying Tennesseans to ask a lawyer for help with a legal issue.⁶⁵ Qualifying users⁶⁶ can post civil legal questions on the website and receive basic legal information and advice from approved volunteer attorneys. Users answer questions to determine their eligibility. Qualifying users then select the legal category to which their question relates, list any upcoming court date, and ask their civil legal question. Questions are posted to the queue where registered attorneys can review them. Users are notified by email when their question is answered. Users who do not have an email address are advised to log back into the site periodically to check for a response. "OTJ addresses the "connectivity" problem, which most states experience. Clients in urban areas who cannot connect to legal clinics because they lack transportation, have child care issues, face conflicting work schedules, etc., need a way to be served without having to be at a particular location at a set time. There are also many clients in rural areas where there are very few lawyers, clinics or other pro bono resources available—OTJ addresses both problems.⁶⁷

The OTJ program and associated technologies are owned by the law firm of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC.⁶⁸ Its license is available for use

⁶⁴ *Volunteer with Online TN Justice*, TENN. ALLIANCE FOR LEGAL SERVS., <http://www.tals.org/volunteerwithotj> (last visited Feb. 13, 2015).

⁶⁵ *Id.*

⁶⁶ *Id.* (qualifying users are (1) low-income Tennesseans, whose household income is below two-hundred fifty percent (250%) of the Federal Poverty Guidelines, (2) are not incarcerated and (3) have less than five thousand dollars (\$5,000) in total assets).

⁶⁷ *Id.*

⁶⁸ *Id.*

by bar associations, Access to Justice Commissions or other reputable pro bono organizations for free as long as the entity uses its best efforts to serve the client population in the area in which that entity operates.⁶⁹ Several other states have launched their own online justice site using the OTJ technology, furthering the access to justice cause well beyond the borders of Tennessee.⁷⁰

In addition to the link to OTJ found at JusticeForAllTN.com, links are provided to webinars hosted on Youtube.com that are designed to address “hot topic” areas of public interest law. These videos are planned, filmed, and posted as part of a collaborative effort between the Commission, the TBA, and the Tennessee Bar Association Access to Justice Education subcommittee.⁷¹ There are two series of videos: one series intended for public consumption, and a second series that is intended for consumption by legal professionals.⁷² The video topics are selected based upon information provided by the Commission and the Tennessee Bar Association Access to Justice Committee, which highlights the needs that are recurring and/or emergent for Tennesseans.⁷³

For example, it was determined that an introduction to domestic violence law would be an important topic to address in order to educate and empower legal professionals to assist those that may be facing domestic violence. To that end, a video was planned, filmed, and posted online through the joint efforts of the above described entities. This video has been viewed hundreds of times.⁷⁴

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Videos*, JUSTICE FOR ALL TENN., <http://www.justiceforalltn.com/videos> (last updated Dec. 2012).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

An example of a video created for the public is titled “Introduction to the Tennessee General Sessions Court,” and provides information to self-represented litigants about the Tennessee court system, what to expect at General Sessions Court, and how it works.⁷⁵ The video also includes information about free legal resources that may be available to unrepresented parties.⁷⁶ Two of the resources identified in this video—as well as on JusticeForAllTN.com—are the phone number 1-888-aLEGALz, and court approved pro se divorce forms.⁷⁷

1-888-aLEGALz (“aLEGALz”) was created by a coalition of Tennessee legal groups and Memphis-based International Paper.⁷⁸ Together, these entities have joined forces to fund and operate a toll-free phone line offering legal information and referrals to low-income Tennesseans.⁷⁹ aLEGALz assists Tennesseans in finding resources to deal with civil legal issues.⁸⁰ Tennesseans are able to call this number, leave a message, and then have those messages returned by a licensed Tennessee lawyer.⁸¹ aLEGALz, much like OTJ, addresses the “connectivity” issue by allowing Tennesseans in both urban and rural

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ International Paper Company is a pulp and paper company, the largest such company in the world. It has approximately 65,000 employees, and it is headquartered in Memphis, Tennessee. As stated on its webpage, “What makes International Paper is our commitment to do the right things, in the right way, for the right reasons.” *IP Giving*, INT’L PULP & PAPER CO., http://www.internationalpaper.com/US/EN/Company/IPGiving/PF_SegmentPage_1_13989_13989.html (last visited Mar. 5, 2015).

⁷⁹ *New Toll-Free Line Offers Free Legal Information, Referrals*, TENN. ST. CTS, <http://www.tncourts.gov/press/2013/01/14/new-toll-free-line-offers-free-legal-information-referrals> (last visited Feb. 13, 2015).

⁸⁰ *Id.*

⁸¹ *Id.*

areas, who otherwise would not have the ability to attend a legal clinic, to reach out and speak with an attorney, and receive information and referrals.⁸²

Finally, in 2011, the Tennessee Supreme Court approved uniform pro se divorce forms.⁸³ These forms are available for use by individuals that are seeking a divorce in Tennessee and meet certain qualifications.⁸⁴ These qualifications require that the parties have no minor children in the home, no real estate owned by either party, no retirement account owned by either party, and have already reduced to writing an agreement as to how any tangible assets and debt will be divided between the parties.⁸⁵ These forms allow for individuals who otherwise would not access the court system, or who would access the court system by inefficient and, perhaps, improper mechanisms to secure a divorce.⁸⁶

A review of the number of users—both by the public as well as by attorneys—of these technologies and forms suggests that not only is there an existing need for increased use of technology in support of closing the access to justice gaps, but that there is an opportunity to do so. An analysis of the number of users, by county, of both OTJ and aLEGALz reveals, first, that the public is increasingly using technology in an effort to meet legal needs, and second, that the populations being served by such technologies consists of, as expected and hoped, those that otherwise would find accessing legal assistance to be challenging.⁸⁷ More specifically, the number of client users of OTJ grew from 1,126 in 2011 to 5,445 as of the end of

⁸² *Id.*

⁸³ *Court Approved Divorce Forms*, TENN. ST. CTS., <https://www.tncourts.gov/help-center/court-approved-divorce-forms> (last visited Feb. 13, 2015).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ TENN. ACCESS TO JUSTICE COMM'N (2012), *supra* note 62, at 13.

2013.⁸⁸ It is important to note that not only did the number of users of OTJ grow, but the data indicates that the most significant growth of users came from counties in which access to traditional legal clinics or legal service providers is limited due to geography.⁸⁹ These data points are replicated in users of aLEGALz.⁹⁰ Not only did the number of public users of OTJ and aLEGALz grow, so did the number of attorney volunteers.⁹¹ This indicates that attorneys are amenable to the concept of providing legal services to the underrepresented through technology, and they actively seeking the opportunity to do so.

As seen above, the use of technology in addressing the gaps in the judicial system is not only viable, but it is worthy of serious consideration and deliberate implementation. Doing so has not only assisted thousands of Tennesseans, but has also engaged a portion of the profession in access to justice issues that otherwise would not be as engaged. The Commission's "disciplined approach" in focusing on the most effective and efficient uses of such resources has been validated and should remain a key component of any Commission's strategic planning.⁹²

B. Increasing Pro Bono Participation to 50%

In drafting the 2012 strategic plan, the Commission recognized that maintaining the status quo was not a viable option, and thus focused on increasing the access of Tennesseans to quality representation.⁹³ Although

⁸⁸ *Id.*; see also TENN. ACCESS TO JUSTICE COMM'N (2014), *supra* note 61, at 22, app. I.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² TENN. ACCESS TO JUSTICE COMM'N (2014), *supra* note 88.

⁹³ TENN. ACCESS TO JUSTICE COMM'N (2012), *supra* note 87.

increasing the educational resources available to self-represented persons through technology undoubtedly provides a useful and necessary service, the Commission's findings underscored the importance of quality legal representation.⁹⁴ Therefore, providing quality representation to indigent Tennesseans and addressing connectivity between potential indigent clients and lawyers was the primary objective of the 2012 strategic plan.⁹⁵

One driving factor behind the Commission's goal of increasing attorney participation in pro bono were from 2009, which indicated that only 18.26% of attorneys licensed in Tennessee voluntarily reported pro bono service with their Board of Professional Responsibility Annual Registration Packet.⁹⁶ That year, the average attorney reporting pro bono service donated seventy-nine hours per year.⁹⁷ "[I]n 2010, 38.96% of all licensed attorneys voluntarily reported pro bono service at an average of seventy-four hours per year . . . which exceeds the aspirational goal of 50 hours per year set forth in Tenn[essee] S[upreme] C[ourt] R[ule] 8, R[ule] of]P[rofessional] C[onduct] 6.1.⁹⁸ "With this information in hand, the Commission set the goal that 50% of attorneys residing in Tennessee will provide pro bono services as defined by the Court on an average of 50 hours per year on or before January 1, 2015."⁹⁹

In examining that goal, it is important to note that the Tennessee Supreme Court defines "pro bono services" as "services provided without a fee or expectation of a fee to persons of limited means or organizations that primarily

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* at app G.

⁹⁸ *Id.* at 13.

⁹⁹ *Id.*

address the needs of persons of limited means.”¹⁰⁰ “Pro bono service can also be the delivery of legal services at a substantially reduced fee to persons of limited means . . . [or] the provision of legal services at no fee or at a substantially reduced fee to individuals, groups, or organizations seeking to secure or protect civil rights and liberties, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes where payment of standard legal fees would deplete the organization’s resources or would be inappropriate.”¹⁰¹ “Additionally, participation in activities for improving the law, the legal system, or the legal profession is deemed pro bono service by the Court.”¹⁰²

In pursuing this goal, the Commission articulated four main steps that would move attorney participation in pro bono closer to the 50% mark. These steps included, attorney education, attorney recruitment, client education and removal of barriers, and connecting lawyers with potential clients.¹⁰³ Each of these steps has been critical in moving the number of attorneys reporting pro bono involvement to 44.31% of all Tennessee attorneys, an increase of 26.05% since 2010.¹⁰⁴ The average amount of hours performed by those attorneys is an astounding 74.13 hours per year, far greater than the national average.¹⁰⁵

Although legal advice clinics are an important aspect of pro bono, the Commission sought to educate attorneys regarding the importance of a lawyer taking up representation of an individual, even if the representation is

¹⁰⁰ TENN. S. CT. R. 8. RPC 6.1 (a)(1)-(2).

¹⁰¹ *Id.* at (b)(1).

¹⁰² *Id.* at (3).

¹⁰³ TENN. ACCESS TO JUSTICE COMM’N (2014), *supra* note 92, at 13.

¹⁰⁴ *Id.* at 2.

¹⁰⁵ *Id.*

limited in scope.¹⁰⁶ After graduating from law school, practitioners quickly learn that their legal education does not necessarily provide adequate preparation to immediately handle many of the areas of the law that most often affect indigent Tennesseans,¹⁰⁷ which most often are within the areas of family law, consumer/credit issues, landlord/tenant, and benefits.¹⁰⁸ The Commission deemed it “vital and necessary” to provide lawyers with the necessary information to handle these “high need” areas of the law.¹⁰⁹ A particular emphasis of the Commission has been to focus on preparing pro bono lawyers to take on the direct representation of an individual, if an initial consultation does not resolve the legal issue.¹¹⁰ In furtherance of this objective, the Commission has:

1. Developed an online curriculum on “High Need” areas of the law, beginning with family law and debtor/creditor issues, to be available on Youtube.com, as described above;

2. Established a marketing and public relations campaign to communicate strategies and CLE opportunities to lawyers;

3. Promoted to other cities the partnership model established by Nashville law firms, the “Pillar Firm” model, whereby firms with strong access to justice commitments educate their attorneys on particular

¹⁰⁶ TENN. ACCESS TO JUSTICE COMM’N (2012), *supra* note 93.

¹⁰⁷ WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (Carnegie Foundation for the Advancement of Teaching 2007).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

substantive areas of the law and then take more pro bono cases in those areas;

4. Proposed to the Tennessee Supreme Court and CLE Commission that excess CLE funds be designated by the CLE Commission and the Supreme Court to provide for the High Needs pro bono CLE training, the promotion thereof, and other access to justice initiatives; and,

5. Implemented steps to measure and track the results of this initiative by tracking attendance and following up with attorneys who participated in the curriculum to determine if they subsequently took a pro bono case.¹¹¹

Along with attorney education, in order to increase participation such that 50% of lawyers residing in Tennessee provide an average of 50 hours of pro bono per year, the existing pool of attorneys engaged in pro bono work must be increased. “The Commission recognized that there is a wide spectrum of law practices in Tennessee, ranging from solo practitioners to large law firms; that lawyers practice in urban, suburban, and rural communities; and that not every strategy is appropriate for every attorney or community.”¹¹² Therefore, in light of these circumstances, and in order to recruit more lawyers providing pro bono, the Commission:

1. Promoted www.JusticeForAllTN.com and www.onlineTNjustice.org to increase awareness of alternative ways to participate in access to justice initiatives;

¹¹¹ TENN. ACCESS TO JUSTICE COMM’N (2012), *supra* note 106, at 14.

¹¹² *Id.* at 15.

2. Provided attorneys in parts of the state that lack an organized pro bono program with resources such as “Attorney of the Day” materials to organize pro bono efforts tailored to their community;

3. Identified firms without pro bono policies and requested that those firms adopt such policies;

4. Combined efforts with the Tennessee Bar Association to recruit law firms in other communities to follow the partnership model established by Nashville law firms, the “Pillar Firm” model;

5. Convenes an annual conference of law school deans, law school pro bono directors, and students to create ways to partner to increase pro bono participation;

6. Developed a proposal for recognition by the Court of firms or legal departments with pro bono policies, individual attorneys, and pro bono organizations with exemplary pro bono participation; and,

7. Updates the Pro Bono Report annually to capture pro bono work statewide and to measure success.¹¹³

These strategies have been employed in an intentional and purposeful fashion in order to engage attorneys where they are, and involve them in access to justice initiatives in manners that are amenable to the varied circumstances of Tennessee lawyers. As discussed above, the technological tools that have been created and employed in furtherance of this cause have been particularly effective in reaching out to, and involving, attorneys from across the state of Tennessee.

¹¹³ *Id.*

Client education and removal of barriers has also been a key focus of the Commission. Specifically, the Commission found that “[p]roviding Tennesseans with an understanding of how to access a lawyer is integral to delivering access to justice. This requires a public awareness effort to reach Tennesseans in need through partnerships with places the public commonly goes to seek help, such as libraries, faith based organizations, courthouses and social service providers.”¹¹⁴ In pursuance of these ideals, the Commission has worked to educate the public on the availability of pro bono services and to remove barriers to finding a pro bono lawyer by:

1. Promoting the available existing technology such as Online Tennessee Justice, Tennessee Technology Centers, and www.JusticeForAllTN.com;
2. Providing information and resources to intake staff at legal service organizations through TALS, general sessions courts, and court clerks’ offices, so that they can direct the public to pro bono lawyers; and,
3. Making www.JusticeForAllTN.com available in languages other than English.¹¹⁵

If the Commission’s efforts to educate attorneys, recruit more attorney volunteers, and educate the public on how to connect with attorneys enjoys even a modicum of success—which these efforts have, in fact, enjoyed great success—then it becomes important to examine how to improve methods for connecting volunteer attorneys with potential indigent clients.¹¹⁶

¹¹⁴ *Id.* at 16.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

The Commission identified two primary ways that clients are currently connected with pro bono lawyers. One way is through legal aid providers federally funded by the Legal Services Corporation (“LSC providers”), and the second is through non-LSC providers. A non-LSC provider describes any organization that provides pro bono legal help but that does not receive federal funding from the Legal Services Corporation. The term includes state and locally funded legal service providers, bar associations, and faith-based organizations that provide legal advice and assistance. The Commission maintains that a comprehensive pro bono infrastructure must include both LSC providers and non-LSC providers.¹¹⁷

In Tennessee, the most widespread pro bono system available to the public consists of the pro bono programs of the four regional LSC programs. Together, their territory covers every county in the state and, even though Tennessee’s LSC programs allocate more than the required amount toward providing pro bono services, they remain unable to provide pro bono services in every county.¹¹⁸ Add

¹¹⁷ *Id.* at 17.

¹¹⁸ *Id.*

to this the fact that Congress continues to reduce federal funding to LSC programs, and the result is added strain to LSC programs in the face of growing demand for services.¹¹⁹

“Many non-LSC organizations provide services to a select population or a specific locality and serve client populations that LSC providers cannot serve. One such example is the plan adopted by the Tennessee and Memphis Conferences of the United Methodist Church, which uses the Church’s existing infrastructure and commitment to social justice to partner with the Commission to recruit member lawyers to provide pro bono services.”¹²⁰ As a portal for those in crisis, this faith-based organization is able to work with its legal partners to connect volunteer attorneys with those in need.¹²¹

Despite the superlative work performed each year by both LSC and non-LSC entities, more work is needed to address the burgeoning gaps in the legal system faced by indigent individuals experiencing situations that implicate the legal system.

In order to connect more lawyers with clients through LSC and non-LSC providers, the Commission will provide a foundation for a comprehensive system of delivery of pro bono services across the state by:

1. Coordinating regular meetings with the Executive Directors and Pro Bono Directors of each of the four LSC providers and with non-LSC providers, the TBA, and TALS;

¹¹⁹ LEGAL SERVS. CORP., BUDGET REQUEST FISCAL YEAR 2013 1-2 (2013), <http://www.lsc.gov/sites/default/files/FY%202013%20Budget%20Request.pdf>.

¹²⁰ TENN. ACCESS TO JUSTICE COMM’N (2012), *supra* note 112, at 18.

¹²¹ *Id.*

2. Developing resources for intake staff to assist in making referrals and foster accountability when their respective agencies cannot provide the client with legal help; and,

3. Establishing a statewide toll free information phone line in aLEGALz, which the lawyers staff, and which the public can access to get information on available resources throughout the state.¹²²

As more lawyers have become, and will continue to become, involved in pro bono work, the Tennessee Supreme Court has worked to establish a mechanism to recognize the efforts of these Tennessee “Volunteers.” More specifically, the Court has established a program entitled “Attorney for Justice,” whereby any Tennessee lawyer that provides 50 or more hours of pro bono work each year is recognized by the Tennessee Supreme Court at a local ceremony, with a certificate, and inclusion on the “Honor Roll” of “Attorneys for Justice.”¹²³ As stated by the Court “[in] an effort to increase the number of attorneys and law offices providing pro bono services to those who cannot afford legal costs, the Tennessee Supreme Court is launching an extensive recognition program. The Court will honor all attorneys providing at least 50 hours of service annually, with a goal of increasing statewide pro bono work to 50 percent participation.”¹²⁴ In its inaugural year, the Attorneys for Justice Program recognized close to 200 lawyers and law firms.¹²⁵

¹²² *Id.* at 19.

¹²³ *Supreme Court Pro Bono Recognition Program*. TENN. ST. CTS., <https://www.tncourts.gov/node/2392634> (last visited Feb. 13, 2015).

¹²⁴ *Id.*

¹²⁵ 2014 Pro Bono Honor Roll, http://www.tncourts.gov/sites/default/files/docs/honor_roll_attorneys_firms_-_february_2_2015.pdf

It is clear from the data and anecdotal evidence described, attorney participation in access to justice initiatives in Tennessee has increased since the formation of the Commission and the implementation of the Commission's strategic plans. But the Commission, has also worked purposefully to involve future attorneys in the access to justice cause.

C. Engaging Law Students

In its first strategic plan, the Tennessee Access to Justice Commission clearly indicated that law schools and law students play significant roles in the pursuit of more equal access to justice.¹²⁶ In fact, the first goal enunciated in the Commission's strategic plan is “[t]o involve more lawyers and law students in meeting legal needs so that the public is better served.”¹²⁷ By deliberately and purposefully including law schools and law students in its strategic plan, the Commission recognized that law school curricula and programming related to access to justice issues can—through planning, oversight, administration, and evaluation—greatly impact both the present and future of unmet legal needs by providing overlooked services, instilling the ideals of public service in students and practitioners alike, and engaging resources and individuals that may otherwise remain on the sidelines.¹²⁸

In its strategic planning, the Commission included a specific provision for how the goal of involving more law schools and law students would be pursued. Rather than simply articulating the goal of involving more law students,

¹²⁶ TENN. ACCESS TO JUSTICE COMM’N (2012), *supra* note 120, at 2.

¹²⁷ *Id.*

¹²⁸ *Statistics of Law School Enrollment and Degrees Awarded, 2012* A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR, available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.authckdam.pdf (last visited Mar. 5, 2015).

the Commission's strategic plan provides that, "Whenever possible, the Commission will use law students to further the projects outlined in this Plan."¹²⁹ Inclusion of this language has allowed the Commission, the committees, the bar, the six Tennessee law schools, and the Tennessee Supreme Court to be creative, flexible, and, importantly, proactive in involving and encouraging law school and law student involvement in Tennessee's access to justice initiatives.

For example, the Commission has encouraged law schools to designate an individual or individuals within each law school as main points of contact with regard to pro bono initiatives taking place at each campus. Such contacts include faculty sponsors, full time administrative personnel responsible for pro bono programming, and/or associate and assistant deans.¹³⁰ Additionally, the Access to Justice Committee of the Tennessee Bar Association has representatives from each law school serving on the Committee, whose members consist of not only pro bono administrators, but also experiential and clinical faculty from each law school. Creating for a statewide conversations to occur has greatly enhanced the ability of law schools and law students to learn from one another in areas including: needs throughout the state; sharing of clinical, other experiential learning, and pro bono programming best practices; opportunities to collaborate; sharing of resources; and encouragement to remain engaged in access to justice initiatives.¹³¹

Similar to the support the Commission expressed for the adoption of law firm pro bono policies discussed *infra*, the Commission encouraged each law school to adopt—to an extent that did not previously exist—a pro

¹²⁹ TENN. ACCESS TO JUSTICE COMM'N (2010), *supra* note 18, at 2.

¹³⁰ Barry Kolar, *Law Students Gather in Memphis to Learn Value of Pro Bono Work*, TENN. BAR ASS'N. (Sep. 29, 2014), <http://www.tba.org/news/law-students-gatherinmemphis-to-learn-value-of-pro-bono-work>.

¹³¹ *Id.*

bono policy for its students.¹³² Adoption of such a policy signals to law students that access to justice is valued by law school administration, faculty, and the profession as a whole. Through law school pro bono programming, students are inculcated that public service is an important part of the legal profession; a proposition that has been identified by several authors as being part of the “core competencies” of successful lawyers.¹³³ Attorneys that participated in pro bono projects as students, or early in their careers, are more likely to continue rendering public service throughout their careers.¹³⁴ Additionally, participation in a law school pro bono program “helps bridge the gap between theory and practice, and enriches understanding of how law relates to life.”¹³⁵ It is across this “bridge”—in addition to other experiential learning opportunities—that students are able to develop core competencies such as interviewing, fact-finding, rapport building, and teamwork.¹³⁶

Since the adoption of the strategic plan, the Tennessee Supreme Court, the Commission, Tennessee Bar Association, and law schools have remained dedicated to the goal of “involv[ing] more . . . law students in meeting

¹³² TENN. ACCESS TO JUSTICE COMM’N (2014), *supra* note 103, at 7.

¹³³ NATIONAL INSTITUTE OF TRIAL ADVOCACY, *The Future of Legal Education: A Skills Continuum* 7 (2009), available at http://www.nita.org/resources/docs/Future_of_Legal_Education.pdf; ROY STUCKEY, ET AL., BEST PRACTICES FOR LEGAL EDUCATION 65-88 (2007); Neil W. Hamilton, *et al.*, *Encouraging Each Student’s Personal Responsibility for Core Competencies Including Professionalism*, 21 THE PROFESSIONAL LAWYER (2012), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/tpl_21_3_20121105.authcheckdam.pdf.

¹³⁴ Paula Lustbader, *Painting Beyond the Numbers: The Art of Providing Inclusive Law School Admission to Ensure Full Representation in the Profession*, 40 CAP. U.L. REV. 71, 82 (2012).

¹³⁵ Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 FORDHAM L. REV. 2415, 2435 (1999).

¹³⁶ Hamilton *et al.*, *supra* note 133.

legal needs so that the public is better served.”¹³⁷ Another mechanism that these Tennessee entities employ on an annual basis in furtherance of this goal is the holding of an annual law school pro bono and public interest law summit. Each fall semester, one Tennessee law school hosts a two-day weekend retreat, during which students learn about and discuss the challenges and benefits that come from “an intentional commitment to pro bono and public interest work.”¹³⁸ These summits serve to remind students that they possess both the power to change the world and the responsibility to do so.¹³⁹ Each year, at least one member of the Tennessee Supreme Court will speak at the event, along with members of the Commission and bar leaders. Learning from and interacting with professionals in this setting not only validates student interest in access to justice issues, but also communicates that access to justice is important to the profession. These summits serve not only as a superb venue to learn and be inspired, but each year a portion of the time is dedicated to brainstorming and planning of methods in which the law schools can collaborate on access to justice initiatives.

An example of such collaboration can be found in the Immigration Alternative Spring Break Project cosponsored by the University of Memphis, Belmont University School of Law, and the University of Tennessee.¹⁴⁰ Subsequent to a summit planning session, these schools worked together to place student volunteers in an office handling U-Visa applications for victims of domestic and/or political

¹³⁷ TENN. ACCESS TO JUSTICE COMM’N (2010), *supra* note 129, at 2.

¹³⁸ Barry Kolar, *supra* note 130.

¹³⁹ Jason Collver, *Recent Pro Bono Conference a Huge Success*, UNIV. OF TENN. COLL. OF LAW (Sep. 9, 2013), <http://law.utk.edu/richmedia/recent-pro-bono-conference-a-huge-success/>.

¹⁴⁰ NATIONAL CENTER FOR ACCESS TO JUSTICE AT CARDOZO LAW SCHOOL, *Model Projects & Structures to Strengthen Law Student Pro Bono to Increase Access to Justice* (2012), available at <http://files.equaljusticeworks.org/ccf/probonomodelsmemo.pdf> (last visited Nov. 12, 2012).

violence.¹⁴¹ The students were supervised by Community Law Office attorneys, and spent their spring breaks learning substantive law related to immigration U-Visa applications, as well as how to interact with clients and other professionals.¹⁴² Through the efforts of these students, the Community Law Office was able to serve more individuals than it otherwise would be able to accommodate. This program is possible, in large part, due to the commitment of the participating law schools, the cooperation of the supervising attorneys, and the dedication of the students. The benefits to each participant are readily discernible. Students build core competencies such as peer and professional rapport building, interviewing skills, and teamwork.¹⁴³ The schools provide their students with an opportunity to connect classroom instruction with practical learning experience, and help to fulfill the schools' mission of service. Finally, the public is served because more clients receive legal assistance for their particular dilemmas, and through press releases the public at large sees how law schools participate in "giving back," thus increasing the public's perception of the profession as a whole.

The Tennessee Supreme Court, however, was not satisfied with simply encouraging the involvement of law schools and law students. In fact, the Court adopted a policy to recognize law students that have been involved in pro bono initiatives during law school.¹⁴⁴ Law students are designated by the Court as "Law Students for Justice" if the students "perform[] 50 or more hours of pro bono work during their law school career. . . ."¹⁴⁵ During 2014, 95 law

¹⁴¹ *History of Alternative Spring Break*, Cecil B. Humphreys School of Law, THE UNIV. OF MEMPHIS, <http://www.memphis.edu/law/career/asb.php> (last updated Nov. 14, 2014).

¹⁴² *Id.*

¹⁴³ Hamilton *et al.*, *supra* note 136.

¹⁴⁴ TENN. ST. CTS., *supra* note 60.

¹⁴⁵ *Id.*

students from across Tennessee were recognized by the Court as “Law Students for Justice.”¹⁴⁶

Through these initiatives, law schools and law students have become more involved in access to justice initiatives in Tennessee. The adoption of pro bono policies by each law school, collaborative efforts through both clinical course offerings and pro bono programming, as well as encouragement from legal professionals, has resulted in greater participation by the law schools and law students not only in the access to justice conversation, but also in actual work and service performed.¹⁴⁷ It is anticipated that these initiatives will have a long-term impact in addressing the gaps in the legal system as more law students and young professionals become aware of, and involved in, access to justice issues.¹⁴⁸

V. Third Phase – Maintaining and Measuring

The focus of the Commission’s third planning retreat, held in January 2014, was twofold. First and foremost, the Commission wanted to ensure that it could maintain the momentum achieved since 2009. The Commission had almost achieved the 50% participation rate for lawyers doing pro bono, instituted significant technological initiatives, and made considerable progress on court approved forms for use by self-represented litigants and lawyers handling pro bono. But the Commission deemed sustaining those efforts a critical challenge.¹⁴⁹

Second, the Commission recognized it needed to begin to measure the effectiveness of the efforts undertaken under the first two plans. The Commission recognized, in light of limited resources, the need to place emphasis on the

¹⁴⁶ *Id.*

¹⁴⁷ Hamilton *et al.*, *supra* note 143.

¹⁴⁸ *Id.*

¹⁴⁹ TENN. ACCESS TO JUSTICE COMM’N (2014), *supra* note 132, at 8-9.

programs that have been the most effective, to discontinue spending resources on programs that have not been effective; and to use new technologies and the new information to leverage existing programs and launch new programs where the need is the greatest.¹⁵⁰

A. Maintaining Momentum

To maintain the successes of the first two phases, the commission developed a series of recommendations to support ongoing efforts and to address areas of ongoing unmet need. First, the Commission recognized the significant potential of partnerships with the faith-based community to connect with low-income Tennesseans in need of legal assistance. To that end, the 2014 plan includes a goal of establishing 20 new faith-based programs across the state and directs staff support to achieve that goal.¹⁵¹ The Commission also recognized the potential of law school partnerships, and established a goal of holding an annual summit of law school students and faculty to encourage increased pro bono work by law students.¹⁵² The Commission also developed a pro bono recognition program for all lawyers and law firms meeting the aspirational goal of fifty hours of pro bono annually. Designated as “Attorneys for Justice” on an annual basis, the qualifying attorneys are recognized at a public event jointly sponsored by the Commission and the Supreme Court.¹⁵³

The Commission also recognized three areas of need that had not been adequately addressed, and developed initiatives to meet those needs. First, to meet the ongoing need for family law assistance for low-income

¹⁵⁰ *Id.* at 8.

¹⁵¹ *Id.* at 14-15.

¹⁵² *Id.* at 17-18.

¹⁵³ *Id.* at 19.

clients, the Commission set a goal of recruiting five large law firms to commit to focusing their pro bono work exclusively on family law matters.¹⁵⁴ Second, to further meet that need, the Commission reconstituted a mediation committee to increase the availability of pro bono mediation services, particularly in family law cases. Third, to try to more effectively meet the needs of rural Tennesseans, the Commission committed the time of staff and commissioners to establish a monthly pro bono clinic in each rural judicial district in the state.¹⁵⁵

The Commission also recognized a gap between the need and available resources. To close that gap, the 2014 plan recommends development of a public awareness campaign for outreach to those in need of legal assistance.¹⁵⁶

B. Measuring and Assessing Effectiveness

1. Legal Needs Study

The Commission's first recommendation in the 2014 Strategic Plan was to conduct a legal needs study. The last statewide legal needs study done in Tennessee was published in 2004 and utilized data collected in 2003. To help the Commission and its collaborative partners refine existing programs and launch new initiatives to impact the most Tennesseans in the most profound way, the Commission expressed the need for current information.¹⁵⁷

Thanks to a generous grant from the Ansley Fund of the Frist Foundation and in collaboration with the Tennessee Alliance for Legal Services and the Tennessee Bar Association, a new legal needs study was conducted by

¹⁵⁴ *Id.* at 13-14.

¹⁵⁵ *Id.* at 12-13.

¹⁵⁶ *Id.* at 18-19.

¹⁵⁷ *Id.* at 9-10.

the University of Tennessee, College of Social Work, which also conducted the study published in 2004.¹⁵⁸ The Legal Needs Study was completed in October 2014, and found that more than 60 percent of vulnerable Tennesseans face a significant civil legal need. In addition, the goal of the study was to examine the effectiveness of delivering legal assistance to those in need. The study showed that only 25 percent of the respondents were aware of resources to help find a lawyer, and even fewer knew where to find free legal services. Less than 40 percent sought any help pursuing a legal recourse, and a third of those decided to navigate the system on their own. The study surveyed over 1,400 Tennesseans who are considered low-income or impoverished, with low-income being defined as a family of four earning \$29,812 or less annually. A similarly sized impoverished family would make \$23,850 or less per year. Civil legal problems most cited by those answering the survey include conflicts with creditors, landlord-tenant issues, problems obtaining or paying for health care, and concerns regarding government benefits.¹⁵⁹

The study found that those most severely impacted by legal issues were the poorest, the youngest and minorities. The study also highlighted the fact that the most commonly reported problems were not always the most disruptive to people's lives. For example, medical bills and health insurance were frequent problems, but were not as disruptive as caring for a child after the breakup of a marriage – a less commonly mentioned problem. Respondents most often cited resignation to their situation

¹⁵⁸ *Id.*

¹⁵⁹ See *60 Percent of Low-Income Tennesseans Face Civil Legal Problems, Study Shows*, TENN. ST. CTS. (Nov. 25, 2014), <http://www.tncourts.gov/news/2014/11/25/60-percent-low-income-tennesseans-face-civil-legal-problems-study-shows> (press release summarizing study). The complete study is available at https://www.tncourts.gov/sites/default/files/docs/2014_legalneeds_report_1.pdf.

as a reason for not seeking help. Many also feared that their situation could get worse if they attempted to fight for any legal recourse.¹⁶⁰

2. Pro Bono Reporting

The Commission also restated its support for required reporting of pro bono work as part of the annual attorney registration process. The Commission reasoned that reporting would provide essential information necessary to evaluate the pro bono services being rendered and the volunteers providing those services.¹⁶¹

Reporting of pro bono on a voluntary basis had risen from 18% to more than 44%. Reporting peaked at 48% in 2013, extremely close to the Commission's goal of having 50% of Tennessee attorneys voluntarily providing pro bono services. The voluntary reporting, however, presents an incomplete picture of how much pro bono is being performed and who is volunteering. While the Commission remained unanimously against mandatory pro bono and strongly in favor of maintaining the confidentiality of each individual attorney's pro bono information, the Commission believed that the Supreme Court should require attorneys to report their pro bono hours with their annual registration.¹⁶²

The Commission filed a petition with the Tennessee Supreme Court in November 2014.¹⁶³ In addition to requesting that pro bono reporting be required of all attorneys, the petition also included a recommendation that

¹⁶⁰ *Id.*

¹⁶¹ TENN. ACCESS TO JUSTICE COMM'N (2014), *supra* note 149, at 11-12.

¹⁶² *Id.*

¹⁶³ A copy of the petition is available at http://www.tncourts.gov/sites/default/files/adm2014-02187_order_12-2-14_w_color_appendix.pdf.

the annual registration statement included the option for attorneys to make voluntary contributions to an access to justice fund. The Court established a comment period through February 2, 2015.¹⁶⁴ The petition remains pending.

3. Other Data Collection Efforts

The Commission also implemented other methods to increase measurement and accountability of the various initiatives implemented previously. Online Tennessee Justice, for example, now includes a follow up survey distributed to all users of the website.¹⁶⁵ The aLegalz toll free legal services hotline also conducts follow up surveys and provides ongoing data on the types of assistance sought and the direction provided. The Commission also adopted a recommendation that the Commission staff develop a measurement tool for clinic providers and pro bono programs to help assess their focus and efficacy.¹⁶⁶

VI. The Next Step – Really Closing the Gap

A. Pro Se

Inherent in the goals of the Access to Justice Commission's Strategic Plans is the idea that the justice system must become more accessible and understandable to pro se litigants.¹⁶⁷ In pursuit of this goal, the Commission has produced a series of educational videos for self-represented litigants.¹⁶⁸ It has developed and recommended plain-language forms for self-represented litigants and has

¹⁶⁴ *Id.*

¹⁶⁵ TENN. ACCESS TO JUSTICE COMM'N (2014), *supra* note 161, at 20; *see also supra* text and notes 41-47.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

expanded the available divorce forms to include forms for the uncontested divorce of parties with minor children.¹⁶⁹ Working with the General Sessions Judges Conference, the Commission has examined and made recommendations to increase attorney involvement in helping otherwise self-represented individuals through Attorney-of-the-Day programs and other limited-scope representation initiatives in the General Sessions Courts.¹⁷⁰ Also, in collaboration with the Tennessee General Sessions Judges Conference, a General Sessions Court pro se bench book, “Meeting the Challenges of Self-Represented Litigants,” has been created and circulated and is now being used as a model for the creation of a Circuit and Chancery Court Pro Se Bench book.¹⁷¹ In collaboration with the Board of Professional Responsibility, the Commission recommended and the Court adopted a policy distinguishing between legal information and legal advice that continues to provide guidance to court staff, clerks, and attorneys.¹⁷² The Commission has developed plain-language signage for courthouses and distributed it to courts across the state.¹⁷³ The Court has also made the Access to Justice website and the Supplemental Guidelines referenced above available in Spanish.¹⁷⁴

In short, the efforts and accomplishments of the Tennessee Access to Justice Commission and its partners have been nothing short of remarkable. But, and as often stated by the immediate past Chair of the Tennessee Access to Justice Commission, the fight for equal access to justice will never be over.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

As demonstrated through the “Statewide Legal Needs Assessment” completed in the State of Tennessee in 2014, there remain a significant number of individuals and families that have fallen into the access to justice gap.¹⁷⁵ This Assessment included a total of 1,184 completed surveys across the state, with a targeted sample for households with less than \$40,000.¹⁷⁶ The results of the survey can be generalized to poor or near-poor households in Tennessee at a 95% level of confidence with a +/- 2.85% margin of error.¹⁷⁷ As revealed in this Assessment, approximately four out of ten respondents (38.5%) indicated that their household had experienced no problems in the past 12 months.¹⁷⁸ For those households who experienced at least one problem, the average number of problems reported was 3.66.¹⁷⁹ This Assessment clearly and unequivocally indicates that there is a significant population of the indigent population of Tennessee that faces, on a regular basis, civil legal issues.¹⁸⁰

The work of the Commission that must be continued to try and meet these needs include:

- Continued development of educational materials, including online videos and written information, about the areas of the law that these individuals face;
- Continued support of the Tennessee Supreme Court in identifying access to justice as a strategic priority of the Court;

¹⁷⁵ *Statewide Legal Needs Assessment 2014*, TENN. ALLIANCE FOR LEGAL SERVS. (2014), available at https://www.tncourts.gov/sites/default/files/docs/2014_legalneeds_report_1.pdf.

¹⁷⁶ *Id.* at 5.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 15.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 46.

- Continued involvement of the Bar in addressing these needs—particularly through volunteer attorneys that are willing to provide advice and/or representation to indigent individuals; and,
- Continued leveraging of technological resources—including the development of web-based “hot docs” websites for screening of clients and completion of basic forms.

As the pursuit of these objectives continues, it is likely that the needs of individuals such as those that comprise the sample of the Assessment—while not eradicating the gaps in the justice system—will be better addressed.

B. Increased Resources for Legal Services Programs

When the Legal Services Corporation was first created, the initial goal was to provide all low-income people with at least “minimum access” to legal services, defined as the equivalent of one legal services attorney for every 5,000 poor persons. This goal was briefly achieved in FY1980, but not maintained due to inflation and subsequent budget cuts. For example, in FY2004, the LSC estimated an appropriation of \$683 million would have been needed for minimum access; however, the LSC received \$335 million in appropriations that year. According to a 2009 LSC study (cited above), there is one legal services attorney for every 6,415 poor persons.¹⁸¹

The experience in Tennessee has been no different. At the funding peak, for example, LSC-funded programs employed approximately 80 lawyers in east Tennessee

¹⁸¹ Carmen Solomon-Fears, CONG. RESEARCH SERV., RL34016, LEGAL SERVICES CORPORATION: BACKGROUND AND FUNDING 5 (2013).

alone. There are less than 80 lawyers serving the entire state today, and only 26 in East Tennessee. Moreover, LSC funding is a decreasing percentage of the overall budget of each of the four Tennessee LSC-funded programs. For example, only 38% of the funding for Memphis Area Legal Services comes from LSC.¹⁸² Instead the programs all rely on other state and federal grants and funds, private foundation grants, and fundraising campaigns.¹⁸³

Yet the legal services organization, principally the LSC-funded programs, will always be the foundation and core of any access to justice efforts. Pro bono can only go so far in closing the gap and simply is not as efficient as providing direct service through a trained full-time legal services attorney.¹⁸⁴ While making the courts more user-friendly for self-represented litigants can make a meaningful difference, such efforts are not the functional equivalent of the assistance of an attorney. In fact, the availability of providing assistance through a trained legal services lawyer has a very significant positive economic impact.¹⁸⁵

To make significant meaningful progress towards closing the access to justice gap, therefore, there must be a major infusion of additional funding for legal service programs, both LSC and non-LSC funded. Some combination of state legislation, foundation and corporate

¹⁸² See *Funding*, MEMPHIS AREA LEGAL SERV, INC., (last visited Mar. 5, 2015), <http://www.malsi.org/about-us/funding/> (overview of MALS funding sources).

¹⁸³ See, e.g., *Id.*

¹⁸⁴ See Douglas A. Blaze, *Toward Equal Access to Justice: Rethinking the Role of Law Schools*, 2 TENN. J. L. & POL. 66, 70 nn.14-16 (2005).

¹⁸⁵ Kenneth A. Smith & Kelly Thayer, *Economic Impact of Civil Legal Aid Organizations in Tennessee: Civil Justice for Low-Income People Produces Ripple Effects that Benefit Every Segment of the Community*. TENN. B. ASS'N (2015), http://www.tba.org/sites/default/files/2015-TNFinal%20Report%20Package_Consolidated%20Statewide_3-18-2015.pdf.

support, lawyer contributions, and support from other private donors must be cultivated and implemented. The Commission, Tennessee Supreme Court, and their partners must elevate the needed increase in funding to the number one access to justice priority.

C. Leveraging Law Schools

Despite the recent increased attention on access to justice initiatives and inclusion of law schools and law students in addressing the same, the potential role of law schools has been largely ignored.¹⁸⁶ The oversight is understandable, however, due in part to the fact that historically law schools generally have not played a very significant role in helping to meet the legal needs of the poor.¹⁸⁷ For example, despite the longevity and importance of clinical programs at some law schools, the legal academy has been slow to embrace clinical education as a core and vital part of the curriculum.¹⁸⁸

Nevertheless, acknowledgement by the Tennessee Supreme Court and the Access to Justice Commission of the importance and potential of law schools and law students with respect to the access to justice arena has been empowering, invigorating, and has created an opportunity for Tennessee law schools to purposefully and reflectively consider their role in such initiatives. As Professor Phyllis Goldfarb recently wrote, “future value of law students’ three-year sojourn will require law schools to teach less about what the law is and more about what the law does

¹⁸⁶ Douglas A. Blaze & R. Brad Morgan, *More Equal Access to Justice: The Unrealized Potential of Law Schools*, 82 MISS. L.J. SUPRA 181, 182-83 (2013).

¹⁸⁷ *Id.*

¹⁸⁸ Douglas A. Blaze, *Déjà Vu All Over Again: Reflections on Fifty Years of Clinical Education*, 64 TENN. L. REV. 939, 939-43 (1997) (reviewing the history of clinical legal education).

and what lawyers do with law.”¹⁸⁹ Law schools in Tennessee are responding to this clarion call and invitation to be significant partners with the Court, Bar, and profession. Significant expansion in the number and types of law school clinics represent a potentially very meaningful source of needed legal representation, particularly in light of the unique position of law schools within the profession.¹⁹⁰ And the recent explosion of law pro bono programs can provide not only considerable direct representation, but also leverage the work of the private bar and legal services programs.¹⁹¹ For example, in terms of hours devoted to legal services by the students and faculty in a clinical setting, even a very conservative estimate approaches 20,000 hours annually – or the equivalent of ten full-time attorneys.¹⁹² That is from just one relatively small law school. Additionally, and as discussed above, the involvement of Tennessee law schools and students in pro bono initiatives has grown exponentially over the last six years, especially in terms of number of total hours dedicated to pro bono by law students, and the number of projects that the law schools and students support.¹⁹³

“But law schools have to step up. If the goal really is greater access to justice, as it must be, legal education has to commit to be a major player in the effort. Not just because it is the right thing to do, but because such a commitment would benefit students, faculty, and the clients they can serve.”¹⁹⁴ Despite the growth in terms of clinics and pro bono programs at Tennessee law schools, there are still those students and programs that remain on the

¹⁸⁹ Phyllis Goldfarb, *Back to the Future of Clinical Legal Education*, 32 B.C. J.L. & SOC. JUST. 279, 288-89 (2012).

¹⁹⁰ *Id.* at 301-02.

¹⁹¹ *Id.*

¹⁹² Students devote about 250 hours of legal work per semester in a six-credit clinical course and faculty members expend over 300 hours of supervision per semester. The calculation is based on the participation of 120 students and seven faculty members annually.

¹⁹³ Blaze & Morgan, *supra* note 186, at 183-84.

¹⁹⁴ *Id.* at 197

sidelines. Additionally, law schools are often just a part of a larger university, and they have access to student and faculty expertise from other disciplines on behalf of clients. The value of such a multi-disciplinary approach to the legal needs of the poor is widely recognized.¹⁹⁵ The newest label for this type of legal service program is “holistic representation.” This approach requires consideration and analysis of the legal problem being confronted in the context of the client’s life and larger community problems. The “whole client condition is crucial, not just case resolution.”¹⁹⁶ An essential element of this broader problem-solving strategy is reliance on other professionals like social workers. But we’re not there yet. Partnering with other disciplines, and partnering throughout Tennessee law schools, must remain on the agenda.

As noted above, despite the potential of law school programs, there are significant limitations and hurdles.¹⁹⁷ First, securing ample alumni, faculty, and/or other attorney supervision is often difficult.¹⁹⁸ Because students are not licensed attorneys and must have appropriate supervision, student energy and resources may be left untapped if there are not ample attorneys to provide meaningful supervision of student volunteers.¹⁹⁹ This particular challenge may be most acute at law schools that have adopted graduation requirements that mandate pro bono participation. If such requirements follow the definition of pro bono as set forth in Model Rule 6.1, then the students must be adequately

¹⁹⁵ See *Recommendations of the Conference on the Delivery of Legal Services to Low-Income Persons*, 67 *FORDHAM L. REV.* 1751, 1766 (1999).

¹⁹⁶ Cait Clarke, *Problem-Solving Defenders in the Community: Expanding the Conceptual and Institutional Boundaries of Providing Counsel to the Poor*, 14 *GEO. J. LEGAL ETHICS* 401, 429 (2001) (discussing whole-client representation or holistic advocacy in criminal cases).

¹⁹⁷ Blaze & Morgan, *supra* note 194.

¹⁹⁸ Blaze, *supra* note 184, at 81.

¹⁹⁹ *Id.*

supervised at all times.²⁰⁰ If there is insufficient faculty, staff, or private bar support to supervise students subject to such requirements it may be difficult for the students to meet the requirements.²⁰¹

The second challenge—“securing a commitment from the law schools to accept the responsibility and to assume the mantle of leadership”—may be the biggest challenge facing law school access to justice programming.²⁰² Although the basis for any reluctance on the part of law schools to accept this “mantle of leadership” may involve law school culture or reticence on the part of faculty to assume this responsibility, the end result is the same: law schools and student bodies that are less than fully engaged in such efforts.²⁰³

If we accept the veracity of the preceding arguments and examples of the benefits of law school access to justice programming, then it stands to reason that these benefits can only be developed further as law school programming develops. “Developed” in this context includes: (1) growth of law school involvement; (2) growth of student involvement; and, (3) growth in the participation of society—especially external partners. In the event that law schools engage in the self-reflection advocated above, and determine that more emphasis on access to justice is in order, support from the faculty, staff, and administration can greatly improve the perception in the students’ eyes of the importance of engaging in this work.²⁰⁴

²⁰⁰ See MODEL RULES OF PROF’L CONDUCT R. 6.1 (2010).

²⁰¹ A mechanism to address any potential shortage of supervision in such programs would be to define “pro bono” for purposes of the graduation requirements in terms broader than those enunciated in Model Rule 6.1. For example, the University of Memphis Cecil C. Humphreys School of Law defines pro bono as follows: “Pro bono service may be legal in nature or may be charitable public service.”

²⁰² Blaze, *supra* note 198, at 81.

²⁰³ *Id.*

²⁰⁴ See Rhode, *supra* note 135, at 2431.

VI. Conclusion

Thanks to the foresight and leadership of the entire Tennessee Supreme Court, the creation of the Access to Justice Commission has had a significant impact on access to justice efforts in Tennessee. Prior to its creation, access to justice efforts—although significant—were too often fragmented and uncoordinated. The Commission’s unique composition, leadership, staff support, and strong buy-in by the larger access to justice community, have enabled that community to engage in more collaboration and coordinated planning. Through the combined efforts of the Court, the Commission, and the access to justice partners throughout Tennessee, increased awareness of, and participation in, access to justice initiatives has increased dramatically through the use of strategic planning, collaboration, recognition of attorney efforts, harnessing of technology, and measurement of results and allocation of resources. Although the fight is not yet over, the work of the Court, the Commission, and all those involved in pursuit of these goals has made a substantial positive impact on the amount and quality of services received by those Tennesseans who need most equal access to justice. In the long run, hopefully, the collaborations and innovations will continue to make significant progress toward more effective functioning of the wide range of strategies that have been developed.

