

*Kathleen Jo Gibson*  
Clerk of the Supreme Court  
of the State of New Mexico

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

April 28, 2006

NO. 06-8500

SUPREME COURT OF NEW MEXICO

FILED

IN THE MATTER OF THE APPROVAL OF THE REPORT OF  
THE NEW MEXICO COMMISSION ON ACCESS TO JUSTICE

APR 28 2006

*Kathleen Jo Gibson*

ORDER

WHEREAS, this matter came on for consideration by the Court upon request of the New Mexico Commission on Access to Justice to adopt the recommendations presented in its revised report dated April 17, 2006;

WHEREAS, the Commission has presented this Court with compelling data, which continues to demonstrate that there is a severe shortage of civil legal assistance available to low income New Mexicans. For example, the Commission estimates that less than twenty percent of the legal needs of low income New Mexicans are being met;

WHEREAS, the types of problems not being met include: domestic violence, family law, housing, health access, consumer problems, benefits, education and employment issues; and

WHEREAS, the Court believes this issue demands immediate action, and the Court having considered the request of the Commission and being sufficiently advised, Chief Justice Richard C. Bosson, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Petra Jimenez Maes, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, IT IS ORDERED that the recommendation hereby is ADOPTED as follows:

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Pro Bono Plan

1. This Court assumes oversight of a *Pro Bono* Plan through the New Mexico Commission on Access to Justice;
2. This Court shall establish district court *pro bono* committees; and
3. This Court supports the creation of a funded support staff to be housed at the State Bar of New Mexico and shall assist in obtaining funding.

IT IS FURTHER ORDERED that the Commission hereby is AUTHORIZED to coordinate efforts to recruit *pro bono* attorneys and volunteers, to coordinate efforts of the State Bar of New Mexico, local committees, and legal aid providers to establish a website to offer and facilitate *pro bono* opportunities, and to promote recruitment of law students for *pro bono* service;

IT IS FURTHER ORDERED that the Commission's proposed amendments to Rule 16-601 NMRA, concerning the reporting of *pro bono* hours and an annual goal of fifty (50) hours of *pro bono* work or an annual contribution of \$500.00 (or a combination of work and donation), shall be referred to the Code of Professional Conduct Committee for review, in consultation with the Commission's co-chairs, if necessary, and to submit proposed rule amendments to this Court; and

IT IS FURTHER ORDERED that the Commission's proposed amendments to Rule 18-201 NMRA, concerning Minimum Continuing Legal Education credit for providing *pro bono* services, shall be referred to the Minimum Continuing Legal Education Board for review, in consultation with the Commission's co-chairs, if necessary, and to submit proposed rule amendments to this Court.

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Pilot Project for Uniform Free Process Procedures for Civil Cases

IT IS FURTHER ORDERED that the current pilot project testing a uniform means of obtaining free process in civil cases shall continue until November 1, 2006, in the Second Judicial District Court, the Bernalillo County Metropolitan Court, and the New Mexico Court of Appeals using the forms contained in Appendix 3 of the Commission's revised report dated April 17, 2006;

IT IS FURTHER ORDERED that, as the current pilot project proceeds, the Commission shall coordinate with the chairs of the Rules of Civil Procedure Committee, the Rules for Courts of Limited Jurisdiction Committee, and the Rules of Appellate Procedure Committee to review the forms in Appendix 3 of the Commission's revised report dated April 17, 2006, as may be necessary and appropriate in light of feedback received during the period of the pilot project; and

IT IS FURTHER ORDERED that on or before November 1, 2006, the Commission shall coordinate with the chairs of the Rules of Civil Procedure Committee, the Rules for Courts of Limited Jurisdiction Committee, and the Rules of Appellate Procedure Committee to submit proposed rule amendments to this Court for implementing a uniform means of obtaining free process in civil cases.

Staffing Needs of the Commission on Access to Justice

IT IS FURTHER ORDERED that the Administrative Office of the Courts hereby is AUTHORIZED to include in its fiscal year 2008 appropriation request to the Legislature an expansion request totaling \$100,000 for a full time employee dedicated

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to staff the Commission.

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Funding Needs for Civil Legal Services for Low Income Individuals

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FURTHER, this Court acknowledges the need for funding for civil legal services

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for low income individuals, including funding for *pro se* services.

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DONE at Santa Fe, New Mexico, this 28th day of April, 2006.

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NEW MEXICO COMMISSION  
ON ACCESS TO JUSTICE

REPORT

TO THE SUPREME COURT OF NEW  
MEXICO

Submitted: March 30, 2006  
Rev'd April 17, 2006

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Exhibit 2: John B. Arango, *Strategies for Providing Civil Legal Assistance to Low Income Households in New Mexico* (September 1, 1996).

Exhibit 3: State Bar Task Force on Providing Legal Services to the Poor Long Range Planning Sub-Committee, *A Model for Providing Civil Legal Assistance to Low Income New Mexicans* (January 30, 1997).

Exhibit 4: New Mexico Center on Law & Poverty, *Provider Survey on Legal Assistance for the Poor* (1997).

Exhibit 5: Mary Ann Sarosi, *Report on New Mexico's Legal Services Programs' Intake, Case Assessment, Brief Services and Referral System* (February 28, 1998).

Exhibit 6: Summary of Testimony Presented at New Mexico Commission on Access to Justice Hearings.

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## EXECUTIVE SUMMARY

Poverty is on the rise in the United States. Unfortunately, New Mexico has one of the highest rates of poverty in the Nation. While poverty is an issue across the state, some areas are hit harder than others. For example, McKinley County ranks as the 20<sup>th</sup> poorest county in the nation based on per capita income. Some demographic groups also experience poverty at a higher rate than others. These include Native Americans and Hispanics. A high percentage of single family households headed by women live in poverty. New Mexico has the 11<sup>th</sup> highest rate of poverty among its elderly population. Almost a quarter of New Mexicans who have disabilities live in poverty. An even higher percent of New Mexico's children find themselves growing up poor, making New Mexico the 4<sup>th</sup> highest state in the country for children living in poverty. Altogether, approximately 437,000 persons who live at or below 125 percent of the poverty line in New Mexico are eligible for legal services. These people live in about 128,000 households.

Cognizant of these disturbing poverty statistics, in May 2004 the Supreme Court of New Mexico authorized creation of the New Mexico Commission on Access to Justice. The Commission was asked to report to the Court on the extent to which civil legal needs of low-income New Mexicans were not being met. Co-Chairs Justice Petra Jimenez Maes and Sarah M. Singleton convened a group of legal aid providers, members of the bar, legislators, and judges to study and document unmet legal needs. The Commission used three different methods to identify and quantify the unmet need: it analyzed the nine studies undertaken since 2000 in other states about the civil legal problems faced by low-income individuals and the recent study conducted by the Legal Services Corporation which documented the Justice Gap, and the Commission extrapolated data from these studies; the Commission conducted a survey of major New Mexico legal aid providers; and the Commission held a series of hearings around the state where members of the public, legal aid providers, social service agencies, court officials, judges, and lawyers could testify about the current state of the need. This Report is the culmination of those efforts.

All of the evidence considered demonstrated that there is a severe shortage of civil legal assistance available to low-income New Mexicans. The LSC data established that nationally for every client who receives service, one eligible applicant was turned away by an LSC program because of lack of resources. The data collected by the two New Mexico LSC programs showed that on an annual basis they turn away approximately 18,100 applicants per year. In addition, because LSC programs cannot serve all types of low income people and they routinely do not serve people whose types of legal problem are not within their priorities, the LSC study seriously understates the number of people who are not being served. For example, the three largest legal aid programs in New Mexico—New Mexico Legal Aid, Law Access New Mexico, and DNA-People's Legal Services (covering the Navajo Nation and San Juan County)—served about 13,700 households in 2004, or only about 10.7 percent of the eligible households with legal needs.

Based on the data from the other states, the Commission estimates that less than 20 percent of the legal needs of low-income New Mexicans are being met. The types of problems faced by low income individuals that are going unmet include family law matters, domestic violence, consumer problems, health access issues, housing issues, benefits issues, education issues and employment matters.

New Mexico has traditionally relied upon a combination of staffed legal aid programs and volunteer lawyers to address the legal needs of low income people. As of 2004, the year for which the Commission collected data, New Mexico had 12 major legal aid providers. These providers employed 75 full time lawyers and 14 part time lawyers. In addition, 7 tribal court advocates and 31 paralegals were employed by these programs. This roughly equates to one attorney for every 5000 legal problems faced by low income families. In 2004 the total amount spent to provide legal assistance to low income people was approximately \$11,000,000 from all sources. This funding was spent to provide a variety of representation: advice, brief service, full representation, policy advocacy, impact litigation, and legislative advocacy. Some was also spent on public information.

The evidence presented to the Commission at the hearings showed that the efforts to assist poor people are generally recognized to be of high quality but that there are too few legal aid lawyers and volunteers to meet the needs. Another reason why people's legal needs are not met is that poor people and those trying to assist them are not always aware of their legal rights or of the services available to assist them. In addition there are many other barriers that prevent people from obtaining meaningful access: lack of information and understandable procedures or forms for the pro se litigant, resistance on the part of some courts to the pro se litigant, distance from the court house, language barriers, lack of assistance for the hearing and sight impaired, and many other issues.

Although the State of New Mexico has recently increased support for legal assistance to the poor through the Civil Legal Services Fund, the overall level of funding has not kept pace with the rising costs of doing business and providing services. LSC estimated it will take at least a five-fold funding increase to meet the documented need for legal assistance and a doubling of current funding just to serve those currently requesting help.

As a State that believes in equal justice, we must do something to correct the inequality that confronts our poorest citizens when they are confronted with a legal need. To that end, the New Mexico Commission on Access to Justice recommends that:

- The Court support efforts to obtain a significant State appropriation for civil legal aid.
- The Court adopt the Pro Bono Plan approved by the State Bar and by the Commission;
- The Court permit a pilot program to test a uniform procedure for obtaining free process, and
- The Court allow the AOC to seek funding for full time staff support for the ATJ Commission.

## INTRODUCTION

In May 2004 the Supreme Court formed the New Mexico Commission on Access to Justice (“ATJ Commission” or “Commission”).<sup>1</sup> The Commission was charged with assessing the status of legal aid for low income New Mexicans and for making recommendations to improve the situation. This is the Commission’s first report to the Court. In this report the Commission sets forth an historical background that discusses work done on the issue prior to the formation of the Commission. The report also describes the current legal aid delivery system. It discusses the evidence concerning legal needs of low income people. It discusses obstacles to improving the system of providing legal needs for low income people. The Commission also makes initial recommendations for action. Finally, the report discusses future plans of the Commission.

### Methodology

The AJC Commission determined that it would assess the need in New Mexico by reviewing legal needs studies that other states had recently finished. The Commission also reviewed *Documenting the Justice Gap in America*<sup>2</sup> published by the Legal Services Corporation (“LSC”)<sup>3</sup> in 2005. From this data the Commission extrapolated certain facts about New Mexico. In addition, the Commission submitted a survey to most of the legal aid providers in New Mexico. Responses were received from thirteen providers who represent the major providers of legal aid in our state.<sup>4</sup> The responses provide information on the current state of legal aid delivery and on perceived impediments and possible solutions. Finally, the Commission held hearings in Las Cruces, Roswell, and Santa Fe. In addition video conference hearings were held in Gallup, Taos, and Albuquerque. A variety of people testified at these hearings, including clients of legal aid providers, both voluntary and involuntary pro se litigants, social service workers who provide assistance to low income individuals, members of low income communities, various family-law related groups, legal aid providers, private attorneys and judges. Based on the testimony at the hearings, certain observations about the delivery of legal aid to low income individuals have been made. These conclusions are confirmed by the provider survey and the studies in other jurisdictions.

### Acknowledgements

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<sup>1</sup> The members of the ATJ Commission since its inception are listed in Appendix 1.

<sup>2</sup> *Documenting the Justice Gap in America* is available at [http://www.lsc.gov/press/pr\\_detail\\_T7\\_R6.php](http://www.lsc.gov/press/pr_detail_T7_R6.php).

<sup>3</sup> LSC is a congressionally created corporation that funds local legal services programs. In New Mexico LSC funds New Mexico Legal Aid (“NMLA”) and DNA People’s Legal Services (“DNA”).

<sup>4</sup> The responding providers were Advocacy, Inc., Catholic Charities, DNA, Law Access New Mexico, Legal FACS, Lawyer Referral for the Elderly Project, Lawyers Care, NM Center on Law & Poverty, NMLA, Pegasus, Project Change Fair Lending, Protection & Advocacy, and Senior Citizens’ Law Office. There are some other entities that provide legal aid to low income New Mexicans, but the providers surveyed constitute the vast majority of the providers. Data from the survey have been tabulated and are attached as Exhibit 1.

The Commission gratefully acknowledges the support it has received from the Administrative Office of the Courts and the State Bar of New Mexico. In addition, personnel from New Mexico Legal Aid and Law Access New Mexico provided necessary support for the public hearings. Generous donations made the public hearings possible. The Commission wishes to thank the following:

- Albuquerque Bar Association
- Federal Bar of the United States District Court for the District of New Mexico
- First Judicial District Bar Association
- McCune Foundation
- Montgomery & Andrews, P.A.
- Oliver Seth Inns of Court
- Rodey, Dickason, Sloan, Akin, Robb, P.A.
- University of New Mexico School of Law.

Law students from UNM Law School provided valuable assistance in statistical analysis, research, writing, and hearing summaries. The Commission acknowledges the contributions of Katie Curry, Kate Ferlic, Jamie Fontaine, Matt Ingram, Jennifer Landau, Eliza Lucero, Marcos Perales, Charlotte Rich, and Margaret Romero.

## PRE-COMMISSION ACCESS TO JUSTICE WORK IN NEW MEXICO

Prior to the creation of the Supreme Court's Commission on Access to Justice, much work was accomplished under the auspices of the State Bar of New Mexico. A brief history of that work is helpful to understanding the role of the Commission. In July 1995, the State Bar held the first statewide symposium on issues affecting access to legal assistance for the poor. The symposium was prompted by the State Bar's efforts to increase the availability of legal aid in New Mexico in the face of dramatic funding cuts to and restrictions imposed on the federally-funded legal services programs in the state. The symposium sought to address three distinct areas of concern:

- 1) exploring state and local methods for expanding access to justice;
- 2) identifying specific strategies for change in our existing approach to legal assistance; and
- 3) building a statewide network designed most effectively to utilize existing resources with a view toward expanding those resources.

As a result of the symposium, the State Bar established a "Task Force on Providing Legal Services to the Poor." The work of the Task Force centered on *pro bono* coordination (which produced the statewide "Lawyers Care" program); *pro se* expansion (which resulted in an ongoing dialogue with the courts and the increase of *pro se* clinics, *pro se* forms and *pro se* staff in many district courts in New Mexico); and enhanced funding for legal assistance to the poor (which has produced ever-increasing cooperation in directing public and private funding approaches).

The Task Force also assessed the overall picture of legal needs and legal assistance resources then available in New Mexico. Recognizing that no comprehensive legal needs survey had been done in New Mexico, the Task Force employed data from the American Bar Association's legal needs study (published in 1994) in making a baseline estimate of the probable legal needs in the State. The conclusion of the Task Force estimated 144,000 annual legal needs in New Mexico.

In December, 1995, when it became apparent that federally funding would be further reduced by LSC, the State Bar created a Long Range Planning Committee within the Task Force to develop a plan for creating a civil legal services system that would be less dependent on federal funding.

As part of its work, the Task Force also crafted a plan for New Mexico Civil Legal Services and an "access model" for legal services that proposed the elements of a comprehensive system for the provision of a broad range of legal services throughout New Mexico. The purpose of the Plan was to establish justice by:

- A. Assisting low income individuals and groups to understand and effectively assert their legal rights and interests within the justice system and other settings, with or without the assistance of counsel; and,

- B. Expanding opportunities for poor people to achieve economic self-sufficiency and human dignity by: 1) changing laws, policies and practices that operate unfairly against low income individuals, families, groups and communities; and 2) developing and implementing laws, policies and practices that enable poor people to achieve a decent standard of living, ideally without depending on State assistance.

The access model adopted stressed the critical need for effective use of a hot-line model for telephone intake, advice and brief service while detailing the elements critical to full representation through a range of provider types. The access model also emphasized the critical importance of face-to-face representation by staff attorneys and other volunteer members of the bar. The model, however, documented the fact that (1) there will never be enough staff or volunteer attorneys to provide an attorney for every legal need in low income households; and (2) many low income people, at least initially, want information about their legal need (and, especially, about the consequences if they do nothing) rather than representation. The model proposed a system of 10 components, including: 1) outreach; 2) community education; 3) legal “hotline”; 4) supportive services for pro se litigants; 5) systems for alternative dispute resolution; 6) utilization of private bar; 7) representation by staff attorney programs; 8) group representation; 9) policy advocacy and systemic change litigation; and 10) system management/substantive support. A copy of the complete model is found in *Strategies for Providing Civil Legal Assistance to Low Income Households in New Mexico*, p. 9, which is filed herewith as Exhibit 2.

In January 1997 the State Bar Task Force on Providing Legal Services to the Poor Long Range Planning Sub-Committee published *A Model for Providing Civil Legal Assistance to Low Income New Mexicans*. A copy of which is filed herewith as Exhibit 3. Thereafter the work of the Task Force became the charge of the State Bar’s standing Legal Services and Programs Committee.

In September and October 1997, as part of the overall assessment effort underway by the State Bar and legal services providers, the New Mexico Center on Law and Poverty conducted a provider survey on legal assistance for the poor. Using the 10 component comprehensive model for the delivery of legal services, the Center’s survey sought to evaluate the availability of each critical element of the comprehensive model to determine what services were actually provided, which groups provided what type of services and where in New Mexico were services available. A copy of *Provider Survey on Legal Assistance for the Poor*, 1997, is filed herewith as Exhibit 4.

Based on the survey results and the Access Model adopted, the Task Force decided to evaluate the potential effectiveness of a statewide intake, case assessment and brief services telephone hotline. This study was undertaken in late 1997 and early 1998 and was published on February 28, 1998. See *Report on New Mexico’s Legal Services Programs’ Intake, Case Assessment, Brief Services and Referral System*, filed herewith as Exhibit 5. This report evaluated the methods for conducting intake, case assessment and brief services in the existing legal services program and reviewed emerging trends in New Mexico and throughout the United States of telephone and technology-based help

lines for intake, advice, referral and brief services and identified program options for the future. As a result of this study, the Long Range Planning Sub-Committee adopted a plan to develop and implement a statewide intake, advice and brief service hot-line, later named Law Access New Mexico, and to explore funding options to support these services.

Funding for the proposed hot-line needed to be obtained, and the only viable option was to obtain some form of state funding. After numerous attempts that were vetoed by the then-governor, the legislature passed and the governor signed the Civil Legal Services Act which created the Civil Legal Services Fund and the Civil Legal Services Commission (“CLSC”). This fund collects money from a surcharge on filing fees in District, Metro, and Magistrate courts. The Act went into effect in July 2001 and began funding legal aid providers in 2002. The Act provides that no more than fifty percent of the money can be used for technology based delivery. Initially, the fund collected 1.2 million dollars per year. Most recently, the fund has collected \$1.575 million per year.

Law Access New Mexico began operations in 2002 after receiving funding from the Civil Legal Services Commission. In addition to Law Access, the Civil Legal Services Commission originally provided funding to another ten legal aid providers of various sorts.<sup>5</sup>

During this time period, the State Bar committee charged with access to justice issues began to look at the pro bono provision of legal services in New Mexico. This study culminated in the Ten Step Program for Improving Pro Bono in New Mexico. The Ten Step report has been approved by the Board of Bar Commissioners and, with some modifications, by the Access to Justice Commission. It is submitted with this report as Appendix 2 for the Court’s review and approval.

Concurrently, around the nation members of the civil justice community were recognizing the importance of involving the judiciary and the state bar in the quest for access to justice. Many states formed state Access to Justice commissions. New Mexico joined this movement in May 2004 when the Supreme Court created the New Mexico Commission on Access to Justice. The Court recognized that the lack of civil legal aid for low income people was a pressing need. The ATJ Commission was charged by the Court with assessing the situation in New Mexico, and making recommendations for its improvement. Pursuant to that charge, the Commission tenders this first report to the Court.

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<sup>5</sup> The initial recipients of contracts from the CLSC were Catholic Charities, DNA People’s Legal Services, Law Access New Mexico, Legal FACS, NM Center on Law and Poverty, NM Legal Aid, Protection and Advocacy, Inc., Senior Citizens Law Office, and the State Bar Foundation’s Legal Referral for the Elderly and Lawyers Care programs. In later years, contracts were also awarded to Advocacy, Inc., Pegasus Legal Services for Children, and Project Change Fair Lending. Each funding cycle more providers seek funds from the CLSC.

## GENERAL INFORMATION ABOUT POVERTY IN NEW MEXICO

With over 34 million individuals nationwide living under the poverty line, poverty is a persistent problem in the United States, especially given the fact that these numbers seem to be rising.<sup>6</sup> In New Mexico, poverty is all too apparent. Based on data from the last census, over 320,000 individuals, roughly 18 percent of New Mexico's total population, now live in poverty.<sup>7</sup> Twenty-three percent of New Mexicans live at or below 125 percent of the federal poverty guideline, the income level typically used as the ceiling above which households are not eligible for free legal assistance.<sup>8</sup> New Mexico's poverty rate is 50 percent higher than the national average of 12.4 percent.<sup>9</sup> Along with Mississippi, Arkansas and Louisiana, New Mexico has one of the highest rates of poverty in the Nation.<sup>10</sup>

While poverty is an issue throughout the State, some areas are harder hit than others. For example, McKinley, Luna, Cibola and Guadalupe Counties all rank within the top 100 poorest counties in the United States based upon per capita income (McKinley County - 20<sup>th</sup>, Luna County - 65<sup>th</sup>, Guadalupe County - 66<sup>th</sup>, Cibola County - 86<sup>th</sup>).<sup>11</sup>

Likewise, certain demographic groups in New Mexico suffer more from poverty than others. Twenty-three percent of African-Americans, 23.7 percent of Hispanics, 36.1 percent of Native Americans and 9.9 percent of whites (non-Hispanic) in New Mexico live in poverty.<sup>12</sup> Thirty-four percent of single parent families with a female head of household live in poverty.<sup>13</sup> Roughly 12 percent of New Mexico's elderly population lives below the poverty level.<sup>14</sup> This percentage is the 11<sup>th</sup> highest in the Nation.<sup>15</sup>

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<sup>6</sup> U.S. Census Bureau, *Poverty in the United States: 2002* 1 (2003), available at <http://www.census.gov/prod/2003pubs/p60-222.pdf> (last visited February 8, 2006). This number is 1.7 million higher than the 2001 data on individuals living below the poverty line. *Id.*

<sup>7</sup> U.S. Census Bureau, *New Mexico – Fact Sheet – American Factfinder*, available at <http://factfinder.census.gov> (last visited February 7, 2006).

<sup>8</sup> U.S. Census Bureau, Current Population Survey, *Annual Demographic Supplement - Table 25 (Poverty Status by State and Ten Large Metropolitan Areas in 2001)*, available at [http://ferret.bls.census.gov/macro/032002/pov/new25\\_001.htm](http://ferret.bls.census.gov/macro/032002/pov/new25_001.htm) (last visited February 16, 2006).

<sup>9</sup> *Id.*

<sup>10</sup> U.S. Census Bureau, *Poverty in the United States: 2002* 10 (2003), available at <http://www.census.gov/prod/2003pubs/p60-222.pdf> (last visited February 8, 2006).

<sup>11</sup> Wikipedia, *Lowest Income Counties in the United States, 100 Poorest Counties by Per Capita Income*, available at [http://en.wikipedia.org/wiki/Poorest\\_places\\_in\\_the\\_United\\_States](http://en.wikipedia.org/wiki/Poorest_places_in_the_United_States) (last visited February 16, 2006).

<sup>12</sup> Nationwide, approximately 22.6 percent of Hispanics and 25.6 percent of Native Americans live in poverty.

<sup>13</sup> U.S. Census Bureau, Census 2000 Demographic Highlights, *New Mexico – Fact Sheet*, available at <http://factfinder.census.gov> (last visited February 7, 2006).

<sup>14</sup> U.S. Census Bureau, 2004 American Community Survey, *Percent of People 65 Years and Over Below Poverty Level in the Last 12 Months: 2004 (Table R1703)*, available at <http://factfinder.census.gov> (last visited February 16, 2006).

<sup>15</sup> *Id.*

Approximately 24.2 percent of the disabled in New Mexico live in poverty.<sup>16</sup> Additionally, nearly 28 percent of children in New Mexico live in poverty.<sup>17</sup> This percentage is the 4<sup>th</sup> highest in the nation.<sup>18</sup>

People living in poverty face legal problems. In the United States we have historically attempted to deal with these problems in two ways: through staff attorney legal aid offices and through volunteer efforts by other members of the bar.<sup>19</sup> As in other parts of the nation, New Mexico's first organized attempt to address the legal needs of poor people started with a legal aid society. Legal Aid Society of Albuquerque was formed in the 1950's. DNA-People's Legal Services was formed in 1967, and other legal aid programs, including Indian Pueblo Legal Services, were formed in the 1960's under the Office of Economic Opportunity. In 1974 Congress passed and President Nixon signed the Legal Services Corporation Act.<sup>20</sup> Shortly afterward, Northern New Mexico Legal Services was formed by combining the legal aid programs from Santa Fe, Taos, and Sandoval Counties. Later Southern New Mexico Legal Services was formed. Eventually, all of New Mexico except San Juan County, the Navajo reservation and the Jicarilla Apache reservation would be served by one program - New Mexico Legal Aid. DNA serves the people on the Navajo and Jicarilla Apache reservations and in San Juan County.

### **NEW MEXICO'S LEGAL AID PROVIDERS**

The following is a brief description of the legal assistance providers receiving funds from the state of New Mexico via the CLSC in 2005:

1. Advocacy, Inc. provides assistance in uncontested legal guardianship services to low-income care givers raising children whose parents are unable or unwilling to care for them.
2. Catholic Charities of Central New Mexico provides legal services to immigrants throughout New Mexico.
3. DNA People's Legal Services provides general legal services to San Juan County and people on the Navajo and Jicarilla reservations.
4. Law Access New Mexico provides a statewide telephone helpline to provide advice and brief service and to make referrals for more extensive representation for poor people across New Mexico.

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<sup>16</sup> U.S. Census Bureau, 2004 American Community Survey, *Disability Characteristics (Table S1801)*, available at <http://factfinder.census.gov> (last visited February 16, 2006).

<sup>17</sup> U.S. Census Bureau, 2004 American Community Survey, *Percent of Children Below Poverty Level (Table R1704)*, available at <http://factfinder.census.gov> (last visited February 16, 2006).

<sup>18</sup> *Id.*

<sup>19</sup> Throughout this report, the volunteer lawyers are called the private bar, but the volunteer efforts do include those government and corporate attorneys who do provide volunteer assistance to low income individuals.

<sup>20</sup> Alan W. Houseman & Linda E. Perle, *Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States*, 20 (Nov. 2003).

5. Legal FACS provides legal assistance to pro se litigants in Albuquerque and advocacy for victims of domestic violence in counties surrounding Albuquerque.
6. New Mexico Legal Aid provides general legal services to low income individuals people in all counties except San Juan.
7. New Mexico Center on Law and Poverty provides legal advocacy in state administrative systems, the legislature and the courts to generate systemic improvements to policy, regulations and programs that affect low-income New Mexicans.
8. Pegasus Legal Services for Children provides comprehensive legal services to children and their families in greater Albuquerque area.
9. Project Change Fair Lending Center provides education, referral, technical assistance, outreach and advocacy to curb predatory lending abuses.
10. Protection and Advocacy provides legal assistance to people with disabilities and mental illness.
11. Senior Citizens Law Offices provide legal assistance to elderly people in Bernalillo County.
12. State Bar of New Mexico Lawyer Referral for the Elderly provides legal assistance and referrals to seniors around New Mexico, particularly outside of Bernalillo County.
13. State Bar of New Mexico Lawyers Care provides clinics on various topics and provides pro bono referrals around the state.

In order to obtain a picture of current staff efforts, the Commission surveyed the 13 legal aid providers funded by the CLSC in 2005. The survey collected data for the year 2004. In 2004 more money was available for legal aid than in any other year because of an additional one million dollars that was awarded by the Civil Legal Services Commission in one time contracts. This money was collected in 2001 before any contracts were awarded and will not be available again unless there is a legislative appropriation. For this reason the figures appearing below should not be considered representative of past or future years.

As a group the providers receive funding from a variety of sources: federal money from LSC, the Department of Justice, HUD; state funds from CLSC, Area Agency on Aging, and other agencies; IOLTA; donations from Equal Access to Justice Campaign and others; foundations; United Way; contracts for services; and local governments. In addition the Protection and Advocacy providers receive funding from other federal and state sources.<sup>21</sup>

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<sup>21</sup> The P&A funds have been separated from the rest of the legal aid providers because those funds generally do not require means testing of the recipients of P&A services and because national funding statistics do not include P&A money..

**Table 1a: Funding Amounts by Source, Non-P&A**

<b>Funding Source</b>	<b>Amount</b>
Federal	\$4,821,947
New Mexico	\$2,345,998
Local	\$403,000
Other	\$366,263
Foundations	\$325,146
Fees	\$264,650
Donations	\$225,388
IOLTA	\$105,000
Contracts/providers	\$91,592
United Way	\$75,617
Contracts/nonprofits	\$40,685
Contracts/courts	\$2,269
Interest	\$2,043
<b>TOTAL</b>	<b>\$9,069,598</b>

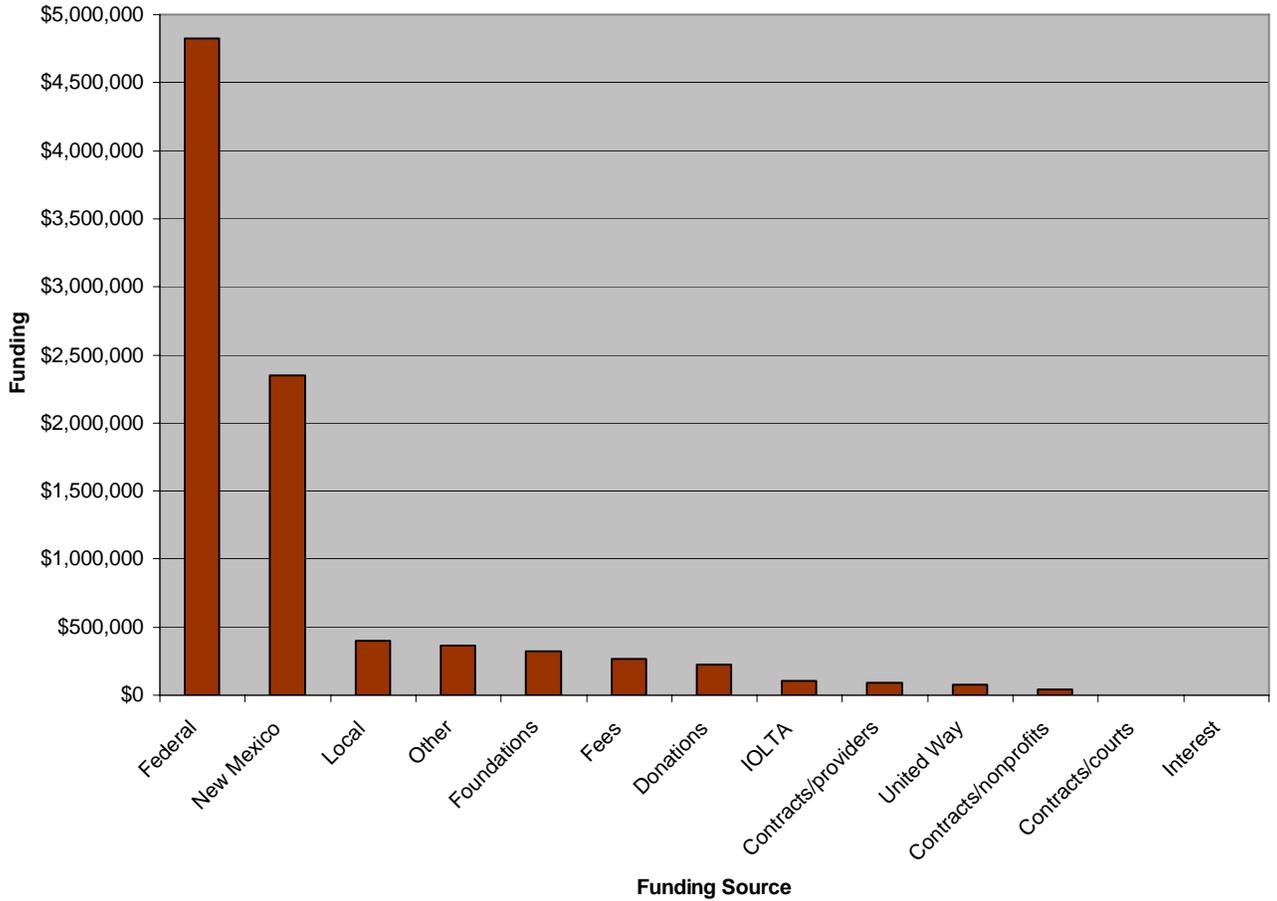
**Table 1b: Funding Amounts for P&A<sup>22</sup>**

<b>Funding Source</b>	<b>Amount</b>
Federal	\$1,620,743
Other	\$220,000
New Mexico	\$112,600
Interest	\$19,600
Foundations	\$5,000
Local	\$0
IOLTA	\$0
Donations	\$0
United Way	\$0
Contracts/providers	\$0
Contracts/nonprofits	\$0
Contracts/courts	\$0
Fees	\$0
<b>TOTAL</b>	<b>\$1,977,943</b>

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<sup>22</sup> Includes all Protection & Advocacy funding, as well as any DNA funds for protection and advocacy activities.

**Figure 1a: Funding by Source, Non-P&A**



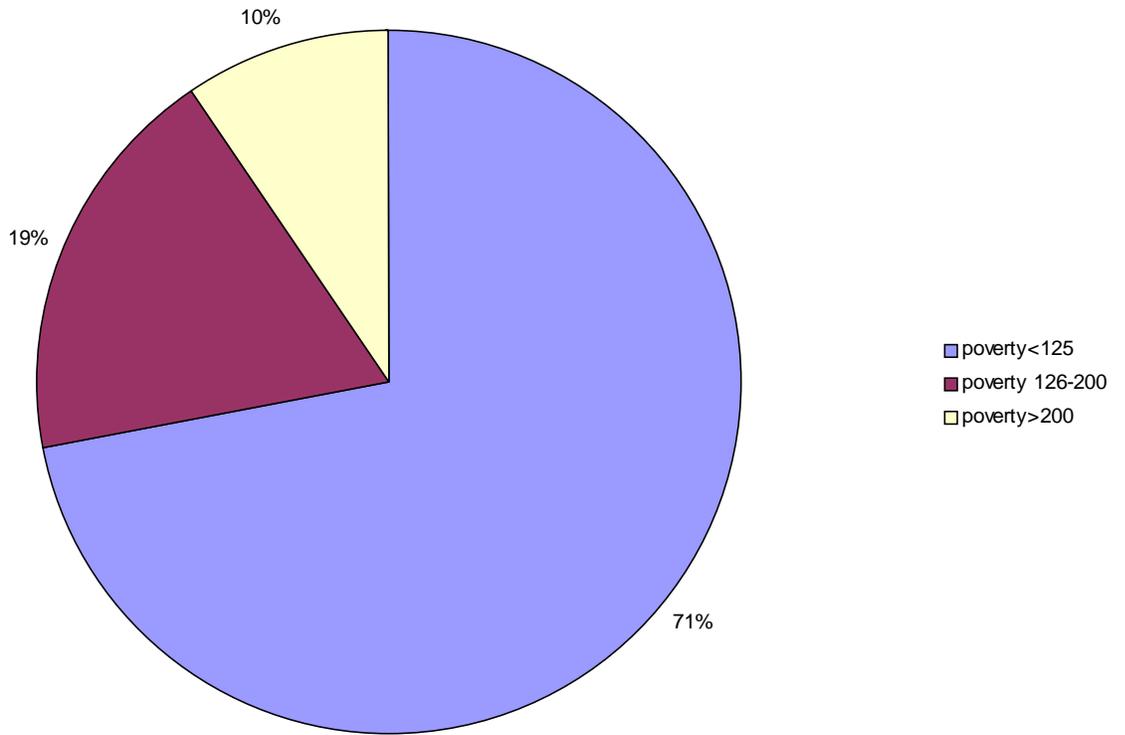
Slightly more than half of the providers surveyed reported offering state-wide services. A majority, however, identified Bernalillo County as the principal location where services were provided. Six respondents indicated that 65 to 100 percent of their activities occurred in Bernalillo County. DNA reported services almost exclusively in San Juan and McKinley Counties (97%). Nearly one half of the respondents reported having provided services to Native American communities.

The survey results revealed that a significant majority of legal aid clients served in New Mexico have income that was deemed at or below 125 percent of the poverty line.<sup>23</sup> For

<sup>23</sup> Under LSC guidelines for 2006, 125 percent of poverty for an individual is \$12,250 and for a family of four it is \$25,000. Two hundred percent of poverty for an individual is \$19,600 and for a family of four \$40,000. 45 CFR Part 1611, Appendix A.

example, eight of the twelve providers who submitted data on this question indicated that 70 percent or more of their clients fall within this income category. NMLA and DNA reported that approximately 80 percent of their clients are at or below 125 percent of poverty.

**Figure 2. Poverty status of clients**



All legal aid providers identified at least one paid attorney on staff. NMLA had the largest paid attorney staff with 31 at the time of the survey. Law Access and DNA reported 10 and 7 paid attorneys. Many organizations relied on some paid part-time or full-time paralegal support. DNA and NMLA also employed Tribal Court Advocates. Nearly all legal aid providers had a substantial number of staff proficient in a language besides English, with Spanish proficiency as the most prevalent. DNA had staff proficient in Navajo. A majority of providers augmented their paid staff with both attorney and paralegal volunteers. Although the number of volunteer hours reported by providers varied widely, the aggregate total of monthly volunteer hours measured comparatively low.

### **Volunteer Lawyer Representation of Low Income Individuals**

While New Mexico has always recognized that its legal aid delivery system will have to depend on volunteer lawyers because of the lack of sufficient staff attorney programs, the role of volunteer attorneys in the delivery system is poorly understood. Currently, there is no requirement that attorneys report the pro bono hours that they contribute. The State Bar does collect information on pro bono hours, but many attorneys do not report their hours. The State Bar's tally of 2004 information shows that, of the 5921 active members of the bar, 2369, or 40 percent, reported pro bono hours. This is a relatively low figure compared to other states, but no conclusions can be drawn from this figure because it is not known whether attorneys that did not report hours did no pro bono work or simply chose not to report them.

The total voluntary contribution reported for 2004 was 140,696 hours, or 59.39 hours per attorney reporting. This is a high number compared to other states. The State Bar did not collect information about the kind of services were provided or about the kinds of legal needs addressed.

Most of the legal aid providers sponsor volunteer attorney programs with nine providers referring matters to volunteer attorneys through a State Bar referral program, a local bar referral, an in-house list of volunteer attorneys, or a combination of all of these. In addition seven of the providers use volunteer lawyers as part of their program.

**Table 2: Attorney Volunteers at Legal Aid Providers**

<i>Organization</i>	<b>Volunteer attorneys</b>	<b>Volunteer hours (per month)</b>	<b>Average attorney volunteer hours (per month)</b>
<b>Advocacy, Inc.</b>	5	10	2
<b>Center for Law &amp; Poverty</b>	0	0	0
<b>DNA</b>	2	28.70	14.35
<b>Immigrant Resource Center</b>	1	72	72
<b>Law Access New Mexico</b>	2	190	95
<b>Legal Facs</b>	20	15	0.75
<b>LREP</b>	N/A	N/A	N/A
<b>NM Bar Foundation</b>	849	414	0.49
<b>NM Legal Aid</b>	55	4	0.07
<b>Pegasus</b>	0	0	0
<b>Project Change Fair Lending Center</b>	2	6	3
<b>Protection &amp; Advocacy</b>	N/A	N/A	N/A
<b>Senior Citizens</b>	0	0	0
<b>TOTALS</b>	936	739.70	0.79

The low number of hours reported by the providers suggests that many did not report hours spent by attorneys on referred cases, but rather the provider reported hours worked by a volunteer attorney for the provider. It also suggests that most of the voluntary assistance from private attorneys is made on an informal basis rather than through organized pro bono programs. These numbers reinforce the need to collect information directly from the attorneys.

**Demographics of the People Served by New Mexico Providers**

Another key survey question asked providers for information on the types of clients they typically help. Not surprisingly, given New Mexico's large Hispanic population, Hispanic was the most common client ethnicity, with providers reporting anywhere from 8 percent to 70 percent of their clients were Hispanic. Also, depending on the provider, anywhere from 1 percent to 70 percent of Hispanic clients were of limited English proficiency.

Similarly, the legal aid providers surveyed identified that 1 percent to 80 percent of their clients were Native American. Of these clients, those with limited English proficiency

ranged from 1 percent to 25 percent. Table 3 below shows percent of clients that require assistance in a language other than English.

**Table 3. Ethnicity and Language**

<b>Ethnicity of client population (percent)</b>				<b>Percent with a language barrier</b>			
<b>Ethnicity</b>	<b>Average</b>	<b>Min</b>	<b>Max</b>	<b>Language</b>	<b>Average</b>	<b>Min</b>	<b>Max</b>
<b>Hispanic</b>	44.10	8.00	70.00	<b>Spanish</b>	19.48	0.80	80.00
<b>Native American</b>	11.79	0.00	70.00	<b>Native American</b>	12.7	0.00	25.00
<b>African American</b>	3.23	0.00	10.00	<b>African</b>	0.2	0.00	1.00
<b>Asian</b>	1.89	0.00	10.00	<b>Asian</b>	24.25	0.00	75.00
<b>Other</b>	38.82	20.00	67.00	<b>Other</b>	11.6	0.00	55.00

**Types of Problems Faced by Low Income Individuals**

The types of legal problems facing those seeking legal aid centered on five major areas:

- family law, including domestic violence
- consumer issues, including predatory lending
- housing, such as landlord tenant disputes
- income maintenance such as TANF and social security
- healthcare, including Medicare and Medicaid

These types of problems mirror many of the substantive legal issues analyzed in the nine legal needs studies from other states.<sup>24</sup>

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<sup>24</sup> See *Justice Gap*, *supra* note 14, at 11 n.12. As indicated by the nine state legal needs studies, the most common types of legal problems experienced include:

[H]ousing (such as evictions, foreclosure, and unsafe housing conditions), consumer (such as debt collection, bankruptcy, and consumer scams), and family (such as divorce, domestic violence, child custody and support), as well as employment, government benefits, health care, and regional and community problems. Although the distribution of problem types varied somewhat from state to state, the same basic types of problems appeared in all nine states.

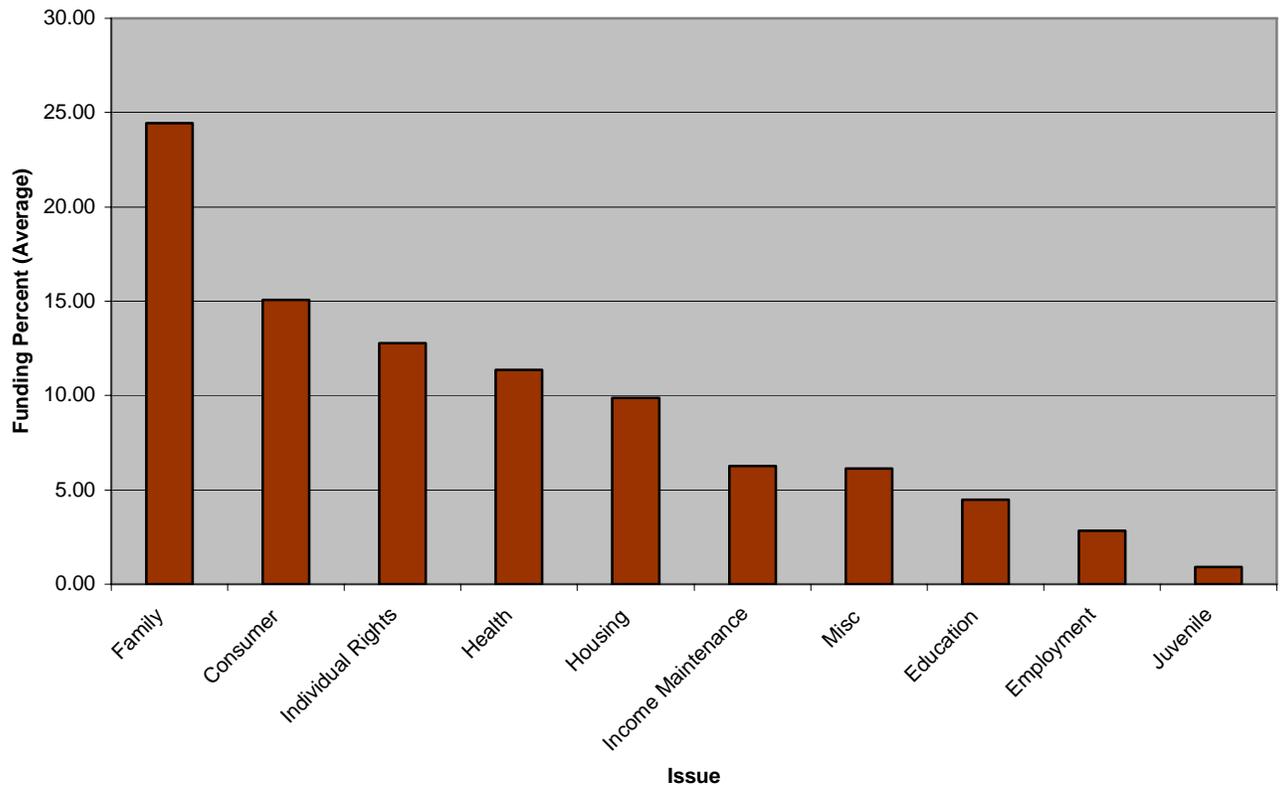
*Id.*

Legal aid providers devote their resources to meeting the needs in these areas. Table 4 reports the percentage of resources, on average, dedicated to 10 substantive issue areas by New Mexico providers.

**Table 4. Types of Legal Matters**

<b>Issue Area</b>	<b>Percentage of Resources</b>
Family	24.45
Consumer	15.08
Individual Rights	12.77
Health	11.35
Housing	9.87
Income Maintenance	6.27
Miscellaneous	6.12
Education	4.48
Employment	2.85
Juvenile	0.92

**Figure 3. Bar graph of figures reported in Table 4**



## Types of Representation Provided

Legal services for low income people take many forms. At one end of the scale is the provision of legal information, which often involves education and in which no attorney client relationship is formed.<sup>25</sup> Many legal aid providers also provide limited representation in the form of advice or brief service.<sup>26</sup> In many instances it is determined in advance and made known to the client that the provider will only offer limited assistance. At the other end of the scale is full direct representation,<sup>27</sup> and legislative and administrative advocacy, which may be on behalf of low income communities or group, as well as on behalf of an individual.<sup>28</sup> Some providers also engage in systemic advocacy and impact litigation in which the focus is on changing some aspect of a system with which low income people have to deal. In New Mexico there are providers who engage in all type representation.

Most of the providers devote the majority of their resources to advice and brief service. Seven out of the thirteen providers reported that over 50 percent of their resources were spent on this kind of representation. Of those seven, four providers devote 80 percent or more of their resources to limited representation. Eight of the providers engage in full representation, and five do no full representation. Of those that do offer full representation, three spend 50 percent or more of their resources on full representation. Most providers do some form of systemic advocacy or legislative advocacy. Only one provider devotes over 50 percent of its resources to this kind of work. Six providers devote less than 10 percent of their resources to this work. The remainder devote between 15 and 30 percent of their resources to systemic or legislative advocacy. While all providers devote some part of their resources to public information, all but three devote 10 percent or less to public information. The three programs that do devote more resources to public information devote between 22 and 46 percent of their resources to this type of work.

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<sup>25</sup> See ABA Standards for Providers of Legal Services to the Poor, Proposed Standard 3.6, *available at* <http://www.abanet.org/legalservices/sclaid/civilstandardsdetail.html>.

<sup>26</sup> See *id.* at 3.4, 3.4-1 and 3.4-2.

<sup>27</sup> See *id.* at 3.1.

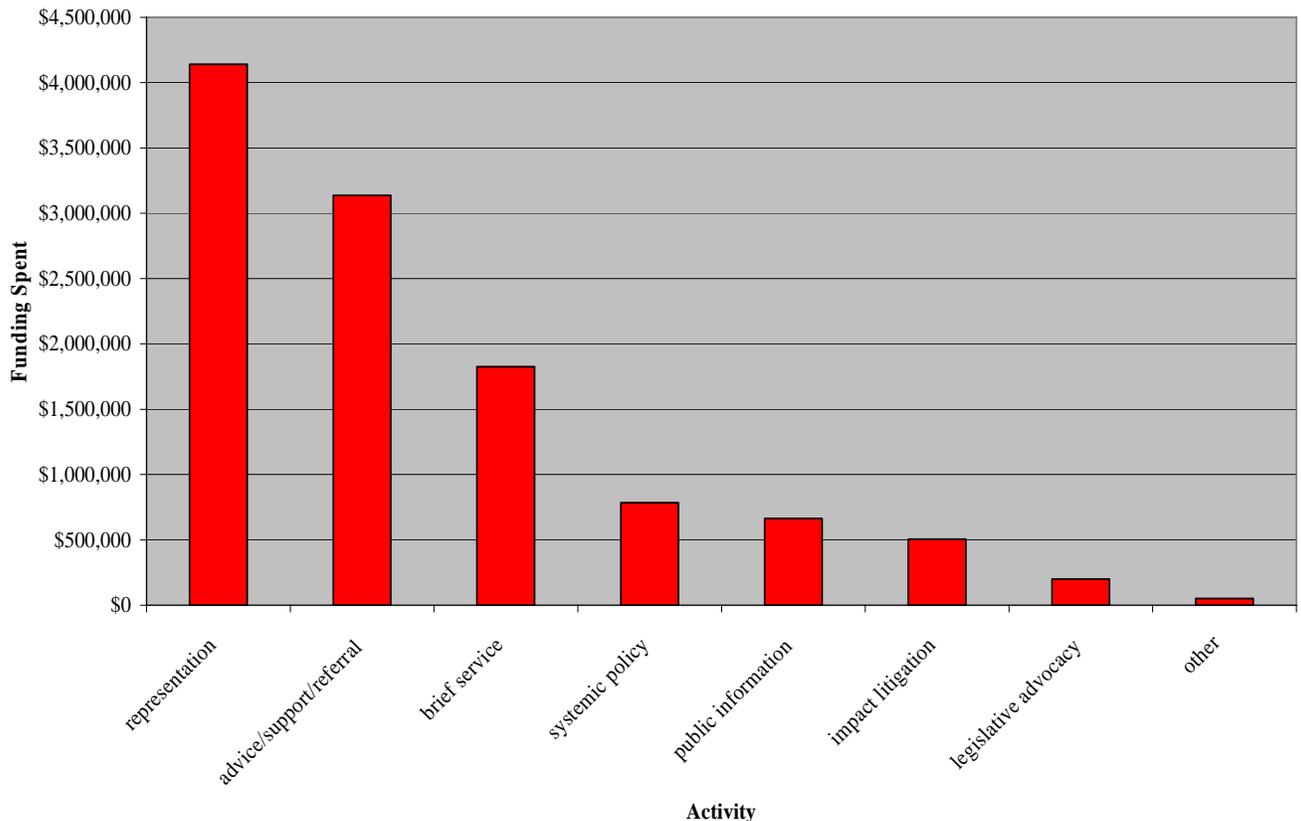
<sup>28</sup> See *id.* at 3.2.

If we look at the New Mexico delivery system as a whole, we can extrapolate from the data provided by the providers and determine the amount of resources that were spent in 2004 on the various types of representation or service. Activities are listed in descending order according to the funding spent.

**Table 5. Types of Representation**

<b>Type of Activity</b>	<b>Average Funding Spent</b>
Representation	\$4,140,652
Advice, support, or referral	\$3,137,012
Brief service	\$1,826,064
Systemic policy	\$783,282
Public information	\$662,807
Impact litigation	\$504,645
Legislative advocacy	\$199,856
Other	\$50,900

**Figure 4. Funding Spent Across Eight Activities in 2004**



The efforts of the legal aid providers have been insufficient to meet the legal needs of low income New Mexicans. Data collected as part of the LSC *Justice Gap* study on the

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number of persons turned down for legal representation by LSC programs shows that New Mexico Legal Aid reported that for every client served, 1.7 individuals are turned away. This means that New Mexico Legal Aid is able to serve only 37 percent of the people who seek its assistance. An estimated 10,000 individuals are turned away by New Mexico Legal Aid each year. Similarly, DNA reported that they represent only 20 percent of individuals they interview. This New Mexico data confirms the findings in the LSC report and the nine legal needs studies that the justice gap is much greater than previously believed. These figures are themselves an understatement of the need because so many members of the low income community with a legal problem do not even contact a legal aid provider.

We now turn to other data the Commission reviewed to assess the unmet legal needs of impoverished New Mexicans.

## UNMET LEGAL NEEDS

One consequence of living in poverty is that individuals in need of legal assistance often do not obtain it.<sup>29</sup> The American Bar Association (“ABA”), LSC, and nine different states have all done in depth studies on the legal needs, issues and access to justice of low-income Americans. While it may be too expensive to undertake a similar study in New Mexico, the results of past studies done around the nation provide a useful starting point from which to identify and analyze unmet legal needs within the State.

### Nationwide Studies of Legal Needs

In 1994, the American Bar Association conducted its Comprehensive Legal Needs Study, which was “the first large-scale national survey of the legal needs of Americans in two decades.”<sup>30</sup> The study concluded that, on average, “low-income households experienced approximately one civil legal need per year.”<sup>31</sup> The study, which focused on unmet needs rather than on unserved clients, found that *low-income households received legal assistance for only one in five of these legal needs*.<sup>32</sup> This study indicated “the existence of a major gap between the civil legal needs of low-income people and the legal help they received.”<sup>33</sup>

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<sup>29</sup> Legal Services Corporation, *Documenting the Justice Gap in America* 19 (2005) (“[T]he majority of low-income people with civil legal problems currently do not have and cannot get legal assistance.”) [hereinafter *Justice Gap*].

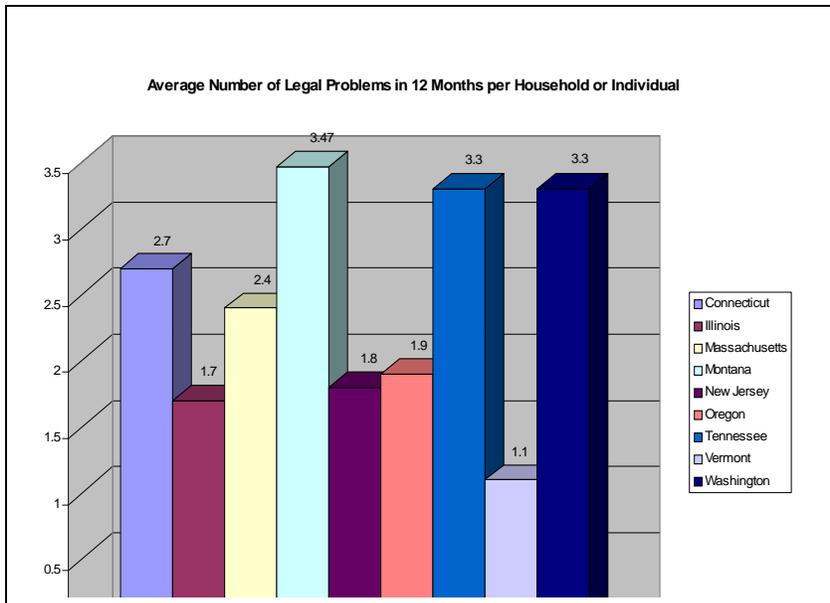
<sup>30</sup> American Bar Association, *Legal Needs & Civil Justice, A Survey of Americans: Major Findings from the Comprehensive Legal Needs Study*, Foreword (1994).

<sup>31</sup> *Justice Gap*, *supra* note 14, at 2.

<sup>32</sup> *Id.* (emphasis added).

<sup>33</sup> *Id.*

Both the more recent Legal Services Corporation report and the nine state legal needs studies conducted in 2000-2005 indicate that the ABA underestimated this gap. The LSC report, which focused on unserved persons rather than on unmet legal needs, found that “roughly *one million cases* per year are being rejected because programs lack sufficient resources to handle them.”<sup>34</sup> More specifically, the LSC report indicates that *for every client served by an LSC-funded program, at least one person seeking help will be turned down.*<sup>35</sup> Since only a small percentage of low income persons know that legal aid providers exists, the number of clients with unmet legal needs must be many times greater than the one million clients who sought, but did not receive, assistance from the LSC funded programs.



Further, all of nine state legal needs studies conducted in the last five years indicate that, on average, low-income households experience more than just one civil legal need each year (as previously indicated by the ABA study). Varying by state, this number ranges anywhere from 1.1 legal needs per household per year (Vermont) to 3.5 legal needs per household per

year (Montana).<sup>36</sup> Additionally, “[a]ll nine recent state studies found that only a very small percentage of the legal problems experienced by low-income people (fewer than one in five) is addressed with the assistance of a private or legal aid lawyer.”<sup>37</sup>

Taken as a whole, the LSC report and the nine legal needs studies conducted by different states indicate that legal needs are more numerous than earlier believed and that more than half of the eligible people who seek assistance are turned away.

Additionally, further analysis of the nine state legal needs studies provides an understanding on how different demographic groups are hit harder by the justice gap than others. This analysis is discussed in the next sections.

### State Legal Needs Studies’ Findings

<sup>34</sup> *Id.* at 5 (emphasis in original).

<sup>35</sup> *Id.* at 5 (emphasis in original).

<sup>36</sup> *Id.* at 11 (table 3).

<sup>37</sup> *Id.* at 10.

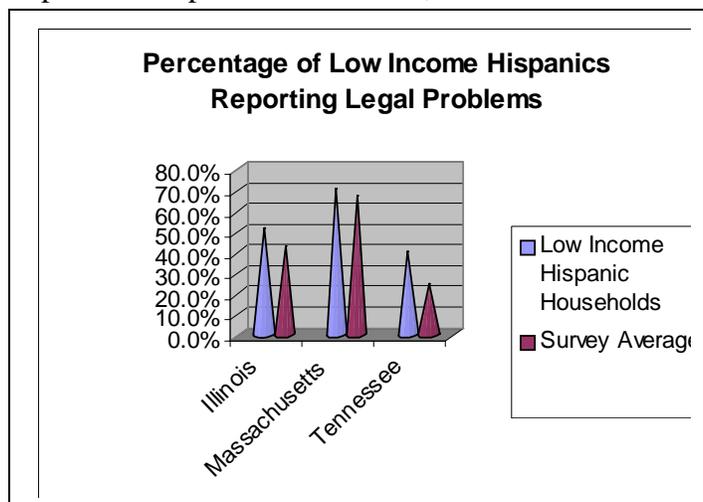
As of summer 2005, Connecticut, Illinois, Massachusetts, Montana, New Jersey, Oregon, Tennessee, Vermont and Washington have all recently engaged in detailed legal needs studies of their respective low-income populations.<sup>38</sup> Such studies have included in depth analyses of different demographic groups, specific types of legal needs faced by low-income individuals, and importantly, what type of legal assistance, if any, these individuals and families are receiving.

While these nine legal needs studies provide ample data on access to justice in various regions throughout the United States, it is important to recognize that New Mexico has a uniquely diverse population.<sup>39</sup> As such, it is difficult to compare the results from different studies without being mindful that such results may underestimate, or in some cases overestimate, legal needs problems faced by different groups. With that caveat, what follows is a discussion of the findings of various state legal needs studies as they relate to New Mexico.

### 1. Hispanics

None of the states doing a comprehensive legal needs study have a Hispanic population comparable to New Mexico, which is 43.4 percent Hispanic.<sup>40</sup> However, in terms of the percent of Hispanics at or below federal poverty levels, many of the studies are comparable with New Mexico (23.7 percent at or below poverty, other studies range from 16.5 to 29.8 percent).<sup>41</sup>

In terms of specific findings, Illinois, Massachusetts and Tennessee all looked at the percentage of low-income Hispanics reporting legal problems. Tennessee found that 40 percent of low-income Hispanic survey respondents reported one to



<sup>38</sup> All of these state studies are available online in the Access to Justice Document Library, located at: [www.ATJsupport.org](http://www.ATJsupport.org).

<sup>39</sup> According to the 2000 Census, over 40 percent of New Mexico's total population is Hispanic, the highest percentage in the Nation. Nationwide, Hispanics make up 12.5 percent of the total population. Additionally, 9 percent of New Mexico's total population is Native American, the 2<sup>nd</sup> highest percentage in the Nation. New Mexico also has higher than average rates of single parent households and households in which a language other than English is spoken.

<sup>40</sup> U.S. Census Bureau, 2004 American Community Survey, *New Mexico Fact Sheet*, available at <http://factfinder.census.gov> (last visited February 16, 2006).

<sup>41</sup> See U.S. Census Bureau, 2004 American Community Survey, available at <http://factfinder.census.gov> (last visited February 16, 2006).

two legal problems, compared with 24.8 percent of low-income, white, non-Hispanic respondents.<sup>42</sup> In Illinois's study, 51.3 percent of low-income Hispanic households reported legal problems, compared with 42.5 percent of low-income, white, non-Hispanic households.<sup>43</sup> The Massachusetts study noted that 70.3 percent of low-income Hispanic households reported legal problems, compared with a survey average of 66.7 percent of low-income households.<sup>44</sup> Additionally, Washington found that low-income Hispanics had a per capita rate of legal problems of 3.6, as compared to a control value of 2.8.<sup>45</sup> Based on the data from other states, Hispanics in New Mexico likely have more legal problems than the average low-income person.

## 2. Native Americans

As with its Hispanic population, New Mexico has a larger Native American population than most of the other states doing legal needs studies (9.3 percent).<sup>46</sup> Montana's Native American population is the closest at 6.4 percent.<sup>47</sup> In terms of Native American population at or below federal poverty levels, states ranged from 17 percent (New Jersey) to 38.4 percent (Montana).<sup>48</sup> New Mexico is the second highest of the states reviewed, with roughly 37 percent of Native Americans living at or below the poverty line.<sup>49</sup>

New Jersey, Washington, Montana and Oregon all calculated the number of legal problems reported by this minority group. The New Jersey study found that 44 percent of low-income Native Americans reported legal problems, compared with 30 percent of low-income whites.<sup>50</sup> The Washington study compared per capita rates of legal problems, finding that low-income Native Americans, both on the reservation and off-reservation, encountered an average of 3.5 legal problems, as compared to a control value of 2.8.<sup>51</sup> Montana found that the average number of legal problems for low-income

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<sup>42</sup> The University of Tennessee College of Social Work Office of Research and Public Service, *Report from the Statewide Comprehensive Legal Needs Survey for 2003* 17 (Table 9) (2004) [Hereinafter *Tennessee Study*].

<sup>43</sup> *The Legal Aid Safety Net: A Report on the Legal Needs of Low-Income Illinoisans* 42 (table 22) (2005) [Hereinafter *Illinois Study*].

<sup>44</sup> Schulman, Ronca & Bucuvalas, Inc., *Massachusetts Legal Needs Survey: Findings from a Survey of Legal Needs of Low-Income Households in Massachusetts* 57 (figure 76) (2003) [Hereinafter *Massachusetts Study*].

<sup>45</sup> Task Force on Civil Equal Justice Funding, Washington State Supreme Court, *The Washington State Civil Legal Needs Study* 31 (figure 9) (2003) [Hereinafter *Washington Study*].

<sup>46</sup> U.S. Census Bureau, 2004 American Community Survey, *New Mexico Fact Sheet*, available at <http://factfinder.census.gov> (last visited February 16, 2006).

<sup>47</sup> U.S. Census Bureau, 2004 American Community Survey, *Montana Fact Sheet*, available at <http://factfinder.census.gov> (last visited February 16, 2006).

<sup>48</sup> See U.S. Census Bureau, 2004 American Community Survey, available at <http://factfinder.census.gov> (last visited February 16, 2006).

<sup>49</sup> U.S. Census Bureau, 2004 American Community Survey, *Poverty Status in Past 12 Months (Table S1701)*, available at <http://factfinder.census.gov> (last visited February 16, 2006).

<sup>50</sup> Poverty Research Institute of Legal Services of New Jersey, *Legal Problems, Legal Needs: The Legal Assistance Gap Facing Lower Income People in New Jersey* 25 (2002) [Hereinafter *New Jersey Study*].

<sup>51</sup> *Washington Study*, *supra* note 30, at 31 (figure 9).

Native Americans, both on the reservation and off-reservation, was approximately 5, as compared with the survey average of roughly 3.5.<sup>52</sup> The Oregon study also examined the number of legal problems faced by Native Americans, concluding that low-income Native Americans faced approximately 5.8 legal problems over the course of a year, compared with a general value of 1.9 problems.<sup>53</sup> Based on these studies, it can be assumed that Native Americans within New Mexico have more legal problems than the average low-income person.

### 3. Individuals with Disabilities

Compared with other states, New Mexico has a fairly high percentage of individuals between the ages of 21 and 64 who have disabilities (21 percent).<sup>54</sup> Montana, Oregon, Tennessee, Vermont and Washington all have similar percentages.<sup>55</sup>

The Illinois, Washington and Montana studies all looked at the number of legal problems faced by persons with disabilities. Washington found that low-income individuals with mental disabilities encountered 3.5 legal problems per year, compared with a control value of 2.8.<sup>56</sup> With respect to individuals with low-income physical disabilities, the Washington study reported that there were 3.1 legal problems per year.<sup>57</sup> Illinois found that 73.9 percent of survey respondents with a disability reported legal problems, compared with a survey average of 49 percent.<sup>58</sup> The Montana study found that low-income individuals with physical disabilities had, on average, 3.9 legal problems per year, while those with mental disabilities had only 3, as compared with the survey average of about 3.5.<sup>59</sup> Based on these studies, it is likely that New Mexicans who have disabilities will have more legal problems than the average low-income person.

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<sup>52</sup> *Montana Legal Needs Study* 37 (figure 49) (2005) [Hereinafter *Montana Study*].

<sup>53</sup> D. Michael Dale, *The State of Access to Justice in Oregon, Part I: Assessment of Legal Needs* 27 (figure 12) (2000) [hereinafter *Oregon Study*].

<sup>54</sup> U.S. Census, *Profile of Selected Social Characteristics: 2000*, available at <http://factfinder.census.gov> (last visited February 16, 2006).

<sup>55</sup> See U.S. Census Bureau, 2004 American Community Survey, available at <http://factfinder.census.gov> (last visited February 16, 2006).

<sup>56</sup> *Washington Study*, *supra* note 30, at 31 (figure 9).

<sup>57</sup> *Id.*

<sup>58</sup> *Illinois Study*, *supra* note 28, at 48.

<sup>59</sup> *Montana Study*, *supra* note 37, at 37 (figure 9).

#### 4. Non-English Speaking Households & Individuals

Over a third of New Mexico households speak a language other than English at home.<sup>60</sup> New Jersey and Illinois have the closest numbers to New Mexico, with 26.6 and 20.4 percent, respectively, of households speaking a language other than English at home.<sup>61</sup>

While Connecticut and Oregon are the only studies to specifically look at low-income non-English speaking households, Tennessee included data with respect to the survey language of respondents (English or Spanish), and the Washington study looked at legal problems among low-income recent immigrants. Connecticut found that 72 percent of low-income households speaking a language other than English reported legal problems, compared with 62 percent of low-income English-speaking households.<sup>62</sup>

On the other hand, Oregon focused on the types of problems faced by low-income non-English speaking households and found that these problems were quite similar to those faced by low-income immigrants, and included these types of legal needs: discrimination, immigration issues, employment, housing and farm worker cases.<sup>63</sup> The Tennessee study found that 47.6 percent of low-income Spanish-speaking survey respondents reported legal problems, as compared with 26.4 percent of low-income English-speaking respondents.<sup>64</sup> The Washington study found that 40 percent of low-income recent immigrants reported legal problems, compared with a survey average of 27 percent.<sup>65</sup> Based on these studies, it is probable that New Mexicans with limited English proficiency have more legal problems than English-speaking low-income people.

#### 5. Single Mother Households

In New Mexico, over 50 percent of single mother families with children under the age of 18 are at or below 125 percent of the federal poverty line.<sup>66</sup> In terms of the nine states conducting legal needs studies, this percentage ranges from 35.3 (Connecticut) to 49.3 percent (Tennessee).<sup>67</sup> Of the two studies looking at single mother households, Massachusetts found that 84.6 percent of low-income single mother households reported

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<sup>60</sup> U.S. Census Bureau, 2004 American Community Survey, *New Mexico Fact Sheet*, available at <http://factfinder.census.gov> (last visited February 16, 2006).

<sup>61</sup> See U.S. Census Bureau, 2004 American Community Survey, available at <http://factfinder.census.gov> (last visited February 16, 2006).

<sup>62</sup> Center for Survey Research & Analysis, *Civil Legal Needs Among Low-Income Households in Connecticut* 5 (2003) [hereinafter *Connecticut Study*].

<sup>63</sup> *Oregon Study*, *supra* note 38, at 25.

<sup>64</sup> *Tennessee Study*, *supra* note 27, at 17 (table 9).

<sup>65</sup> *Washington Study*, *supra* note 30, at 31 (figure 9).

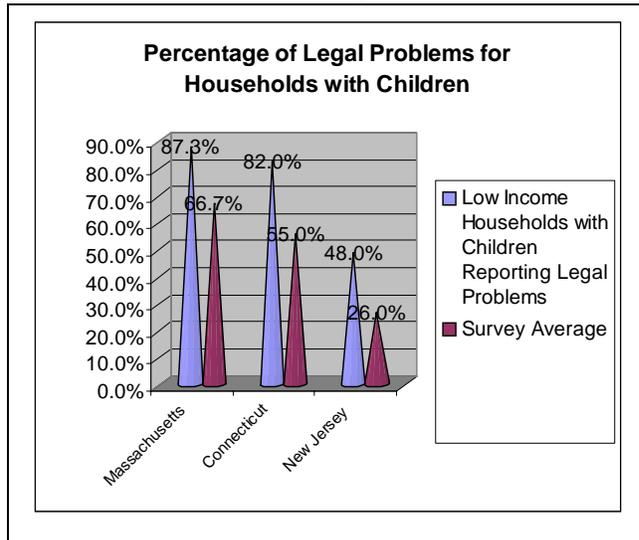
<sup>66</sup> U.S. Census Bureau, Current Population Survey, *Annual Demographic Supplement - Table 25 (Poverty Status by State and Ten Large Metropolitan Areas in 2001)*, available at [http://ferret.bls.census.gov/macro/032002/pov/new25\\_001.htm](http://ferret.bls.census.gov/macro/032002/pov/new25_001.htm) (last visited February 16, 2006).

<sup>67</sup> *Id.*

legal problems, as compared with a survey average of 66.7 percent.<sup>68</sup> Tennessee, on the other hand, found no difference between legal problems reported by single adult households with children and multiple adult households with children.<sup>69</sup>

## 6. Households with Children

In New Mexico, over 20 percent of families with children under the age of 18 live below poverty level.<sup>70</sup> With respect to legal



needs studies states, this percentage ranges from 8.6 percent (Connecticut) to 15 percent (Tennessee).<sup>71</sup> Massachusetts, Connecticut and New Jersey all looked at the percentage of legal problems faced by low-income households with children. The Massachusetts study found that 87.3 percent of low-income households with children reported legal problems, compared with the survey average of 66.7 percent.<sup>72</sup> Connecticut found that 82 percent of low-income households with children reported

legal problems, compared with the survey average of 55 percent.<sup>73</sup> Finally, New Jersey's study found that 48 percent of low-income households with children reported legal problems, compared with a survey average of 26 percent.<sup>74</sup> Based on these data, it is probable that low-income New Mexican families with minor children will have more legal problems than low-income households without children.

<sup>68</sup> *Massachusetts Study*, *supra* note 29, at 45 (figure 52).

<sup>69</sup> *Tennessee Study*, *supra* note 27, at 18 (table 10).

<sup>70</sup> U.S. Census Bureau, 2004 American Community Survey, *New Mexico Fact Sheet*, available at <http://factfinder.census.gov> (last visited February 16, 2006).

<sup>71</sup> See U.S. Census Bureau, 2004 American Community Survey, available at <http://factfinder.census.gov> (last visited February 16, 2006).

<sup>72</sup> *Massachusetts Study*, *supra* note 29, at 47 (figure 57).

<sup>73</sup> *Connecticut Study*, *supra* note 47, at 4.

<sup>74</sup> *New Jersey Study*, *supra* note 35, at 24.

## Estimates of Unmet Legal Needs in New Mexico

Using information from legal needs studies in nine states, this section estimates the number of unmet legal needs in New Mexico. The calculations in this section should be seen as an illustration of the magnitude of the problem; they are not a precise measure of the legal needs of poor people in New Mexico.

This section also proposes a short-term goal for closing the gap between need and services provided.

### **1. Number of Persons Eligible for Legal Aid in New Mexico**

Table 6 on the next page shows the number of eligible persons, at or below 125 percent of the federal poverty guideline (the ceiling for eligibility in most programs) and 200 percent of poverty (the maximum household income permitted by the LSC and the Civil Legal Services Commission), ranked according to the percent of each county's population eligible to receive legal aid at 125 percent of poverty.

Altogether, approximately 437,000 persons in New Mexico are eligible at or below the 125 percent of poverty level. At 200% of poverty, about 737,000 persons, or 41% of New Mexico's total population, are eligible.

The incidence of legal needs is calculated by household, rather than by person. In New Mexico, the 2000 Census showed that persons eligible at or below 125% of poverty live in approximately 128,000 households.

**Table 6: New Mexicans Eligible for Legal Aid  
By Percent Eligible In Each County**

County	Total Population	Number at Given Percentage of Federal Poverty Level		Poverty Rates		
		Under 125%	Under 200%	100% or lower	Under 125%	Under 200%
		McKinley	73,947	32,498	46,820	36.1%
Luna	24,741	10,320	15,602	32.9%	41.7%	63.1%
Socorro	17,490	6,575	9,650	31.7%	37.6%	55.2%
Hidalgo	5,838	2,097	3,163	27.3%	35.9%	54.2%
Mora	5,146	1,767	2,789	25.4%	34.3%	54.2%
Dona Ana	169,559	56,582	87,626	25.4%	33.4%	51.7%
San Miguel	29,125	9,686	15,021	24.4%	33.3%	51.6%
Catron	3,513	1,149	1,812	24.5%	32.7%	51.6%
Cibola	24,414	7,910	13,268	24.8%	32.4%	54.3%
Guadalupe	4,167	1,284	2,083	21.6%	30.8%	50.0%
Roosevelt	17,267	5,233	8,662	22.7%	30.3%	50.2%
Quay	9,941	2,940	5,028	20.9%	29.6%	50.6%
Chaves	60,087	17,477	28,903	21.3%	29.1%	48.1%
Taos	29,760	8,291	13,687	20.9%	27.9%	46.0%
Sierra	12,957	3,602	6,204	20.9%	27.8%	47.9%
San Juan	112,410	31,245	51,883	21.5%	27.8%	46.2%
Lea	53,682	14,889	25,584	21.1%	27.7%	47.7%
Rio Arriba	40,877	10,935	19,080	20.3%	26.8%	46.7%
Curry	43,858	11,561	20,779	19.0%	26.4%	47.4%
Otero	60,893	15,817	27,703	19.3%	26.0%	45.5%
Torrance	16,318	4,165	7,480	19.0%	25.5%	45.8%
De Baca	2,162	546	985	17.7%	25.3%	45.6%
Grant	30,365	7,641	13,785	18.7%	25.2%	45.4%
Union	4,154	1,006	1,711	18.1%	24.2%	41.2%
Harding	810	193	327	16.3%	23.8%	40.4%
Valencia	64,492	15,094	26,662	16.8%	23.4%	41.3%
Eddy	50,908	11,891	21,889	17.2%	23.4%	43.0%
Lincoln	19,169	4,076	7,114	14.9%	21.3%	37.1%
Colfax	13,759	2,838	5,422	14.8%	20.6%	39.4%
Bernalillo	547,422	101,651	180,194	13.7%	18.6%	32.9%
Sandoval	89,422	14,550	26,552	12.1%	16.3%	29.7%
Santa Fe	126,999	20,562	38,040	11.2%	16.2%	30.0%
Los Alamos	18,255	666	1,175	2.9%	3.6%	6.4%
Total	1,783,907	436,737	736,683			
Percent of All Population at this		24.5%	41.3%			

## 2. Incidence of Legal Need

Table 7 shows the kinds of legal needs found in eligible households in New Mexico. The information in this table was generated by first calculating the average legal need in seven states that have conducted legal needs studies in the last ten years. This average rate was then used to determine the number and kind of legal needs in the eligible population in New Mexico.

**Table 7: Number of Legal Needs in New Mexico Households Eligible for Legal Aid at 125% of Poverty**

Substantive Issue	New Mexico Incidence (Average Incidence in 7 states)	Number NM Households Experiencing At Least One Need in Indicated Category In One Year
Housing	26%	34,000
Family	19%	24,000
Employment	19%	25,000
Consumer	23%	30,000
Public Services	21%	27,000
Government Benefits	14%	18,000
Health	17%	22,000
Estates & trusts	12%	15,000
Education	6%	8,000
Immigration	4%	5,000
Elder Abuse	3%	4,000
Institutional	4%	5,000
Disability	4%	4,000
Taxes	4%	5,000
Native American	3%	4,000
Migrant	4%	6,000
Other	24%	30,000
<b>TOTAL LEGAL NEEDS</b>		<b>266,000</b>

This number of legal needs in 128,000 households yields an incidence of slightly less than 2.1 legal problems per household per year. But many households have more than one problem in the same substantive area. For example, a household may have two children with special education issues, or have multiple family law issues (divorce, custody, child support, etc.). Taking into account multiple occurrences of problems, the incidence in the same seven states is 2.4 legal needs per year. This produces an annual total of 311,000 legal needs in eligible New Mexico households.

## 3. Addressing Unmet Legal Need

The gap between services currently provided and the total need is enormous. For example, the three largest legal aid programs in New Mexico—New Mexico Legal Aid, Law Access New Mexico, and DNA-People’s Legal Services (covering the Navajo

Nation and San Juan County)—served about 13,700 households in 2004, or about 10.7 percent of the eligible households with legal needs.

The Commission is therefore proposing a short-term goal: secure enough additional funding to serve every eligible person who currently seeks assistance from one of New Mexico’s legal aid providers.

The number of persons seeking assistance can be very accurately estimated using information collected by New Mexico Legal Aid and DNA-People’s legal Services for two months in 2005. From March 14 through May 13, 2005, the Legal Services Corporation required all its recipients to count the number of eligible applicants that sought assistance but were turned away. The data collected by the two New Mexico programs showed that, in the two month period, 3010 applicants were turned away. On an annual basis, this means that New Mexico’s two LSC funded programs turn away approximately 18,100 applicants per year.

An estimated average cost per case for New Mexico providers can be calculated by averaging the cost per case of New Mexico Legal Aid (that specializes in extended representation) and Law Access New Mexico (that provides brief services). This average is approximately \$439 per case. At \$439 per case, it would cost about \$7.9 million to serve the 18,100 applicants that are turned away each year.<sup>75</sup>

The Commission’s short-term goal, therefore, is to raise an additional \$7.9 million for legal aid in New Mexico, thereby ensuring that every eligible person that seeks legal aid is in fact served.

## **PUBLIC HEARINGS ON ACCESS TO THE LEGAL SYSTEM**

In order to better assess the issues that face those in need of legal representation throughout New Mexico, the Access to Justice Commission held four days of statewide public hearings. The purpose of the hearings was to gather information from a broad range of individuals regarding the status of low-income individuals and families with civil legal problems. In person hearings were held in Las Cruces on September 16, 2005, in Roswell on October 28, 2005; and in Santa Fe on November 4, 2005. Video conference hearings from Albuquerque, Gallup and Taos were held on November 3, 2005. Representative members of the Access to Justice Commission attended each of the hearings.

Prior to each hearing, the Commission, with the support and assistance of the State Bar, sent out thousands of letters to community groups, members of the local judiciary, local and state agencies, state legislators and other interested persons announcing the hearings and inviting participants to testify. Public service announcements and flyers were distributed in each community prior to the hearing date. Interpreters were provided for

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<sup>75</sup> Note that this is **not** the amount needed to respond to every legal need in eligible households in New Mexico. It is the amount needed to serve those persons who know that “legal aid” exists and have mustered the courage to take their need to a provider, only to be turned away.

the hearing-impaired and for non-English speakers. At each session, the Commission heard testimony from local and state agency representatives, members of the bar, the judiciary, court administrative personnel, legal services providers, pro se litigants and consumers of legal services.

The hearings sought information about the types of civil legal problems low-income families and individuals face, how they respond to or address their legal problem, impediments to securing legal help, the outcomes experienced by individuals and families when seeking legal help or when trying to resolve a legal problem, and what role, if any, a civil legal provider played in assisting them to respond to their legal problem. Additionally, the commission sought recommendations and suggestions to improve access to the legal system for low-income persons with civil legal problems. At each hearing, a survey was provided to all attendees to gather additional information regarding the provision of legal services throughout New Mexico.

Overall, 151 people attended the statewide hearings; 87 people presented testimony; and, 72 people answered the written survey. A summary of the testimony presented at each hearing is submitted herewith as Exhibit 6.<sup>76</sup>

### **Obstacles to Providing Access to Low Income Individuals**

The public hearings and the provider survey<sup>77</sup> addressed obstacles to providing low income people with meaningful access to the civil legal system. This section of the report discusses what the Commission learned about the problem and lack of access.

#### **1. Problems with the delivery system**

##### **a. Legal Education and Web Based Information/Services.**

###### **What we heard:**

###### **People do not know what services are available:**

Outreach is a key component to keeping courts, service providers and litigants informed. Every national legal aid needs study concludes that the majority of eligible clients have no knowledge about available services. At the New Mexico hearings, several court personnel and social service organizations around the state testified about their lack of knowledge about even the largest legal service programs. Particularly lacking was knowledge about the statewide telephone legal helpline, Law Access New Mexico.

###### **What we heard:**

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<sup>76</sup> The video tapes of the video hearings and the tapes of the live hearings are also submitted herewith as Exhibits 7 and 8, respectively.

<sup>77</sup> Contemporaneously with holding the hearings, the Commission also conducted a provider survey.

**People do not seek help because they do not know they have a legal problem and the public does not understand the basics of the legal system or how it works:**

Litigants and court personnel testified that many people want their “day in court.” But, of course, the public does not really have an idea of what this means. One judge testified that court sponsored videos would be helpful to the public because they could offer an explanation of court procedures, legal terms, and expectations of outcomes

National legal aid studies show that the general public has a difficult time identifying legal problems and they often do not know that they should seek legal assistance. Some legal aid programs engage in outreach to clients and “intermediaries” but others do not. Those that do outreach tend to target special populations or geographical areas or “advertise” for certain legal issues. At the same time some traditional legal aid programs no longer conduct any outreach because they already have “too many” clients. Smaller programs are concerned about being overwhelmed with requests for services. At the same time providers have very limited budgets for outreach.

People experiencing problems such as eviction and credit disputes often do not think of these in terms of legal problems. They often believe these are problems with no solutions. Also, court personnel testified that the general public is very confused about what the legal system involves, for example, what to expect if they are a plaintiff or defendant. A counselor with a substance abuse center testified that there should be seminars to educate counselors, social workers, and mental health advocates to help them better help their clients with legal problems.

**What we heard:**

**If people know of services they are confused about which service is appropriate:**

At the same time, others reported that they have contact information about legal services programs but are not sure what program potential clients should be referred to. The problem is further complicated by the restrictions placed on some court clerks (particularly in the southeastern part of the state) who are prohibited from offering information about services.

**b. Legal Aid Programs in New Mexico.**

**What we heard about funding for legal services:**

Judges, private attorneys, legal services programs and clients repeatedly testified about the shortage of funding for legal services and court programs. Many testified that the New Mexico legislature was responsible for funding legal services. Legal aid programs testified about the lack of stability in federal funds. A program will be successful in obtaining federal funds for a period of time and then the funds are eliminated or inexplicably allocated to a different program. Additionally, there was testimony about the very low salary scale for legal aid attorney staff and the difficulty of attracting and retaining qualified attorneys. Support was voiced for financial loan repayment assistance for legal aid attorneys.

Recruitment and retention of qualified attorneys at legal aid programs is an important issue. The combination of very low wages and very high college and law school debt is

devastating to new attorneys. We heard testimony that new legal aid attorneys are paid about \$28,000 per year. According to the National Association for Law Placement, a nonprofit organization in Washington, nationally the median salary for class of 2004 law school graduates is \$55,000. The median salary for graduates in private jobs is \$80,000, and large firms are offering as much as \$130,000. Yet legal aid attorneys have just as much debt as other new attorneys. In New Mexico the average UNM law grad has \$45,000 debt. Attorneys from other law schools around the country often have \$65,000 - \$100,000 debt.

**What we heard about staffed based programs:**

Legal services clients, former and current, from many programs testified how happy they were that they had received legal help and they were very grateful. This important testimony was very gratifying and supportive of the quality of service provided by staff programs. It was important for the ATJ commission to hear that while it can be difficult for clients to access services because of the volume of people requesting help, once they “got in the door” they received substantial help in resolving their legal problems. This testimony was universal in terms of the range of programs including specialty services such as children’s law programs and disability law programs as well as telephone advice and general legal aid services.

**What we heard about case priorities for representation:**

One road block for clients “getting in the door” for virtually all representation services is whether their particular facts and circumstances fall into a category of “case priorities.” One Albuquerque judge recommends that all case services should be prioritized in some fashion. This judge recommends a focus on children, grandparents with kids, custodial parents, and single moms. Someone else testified that programs should prioritize the need for attorneys to contested cases. Legal Aid in Santa Fe testified about their restricted case priorities: only public housing issues, not general landlord or housing issues; DV but not general domestic relations issues. Another legal aid attorney testified that the program must prioritize cases such as whether to focus on unemployment benefits or housing conflicts. “Specialty” programs have even greater restrictions focusing on only elder, disabled or domestic violence. The telephone helpline, on the other hand, maintains more of an “open door” approach to client problems.

**What we heard about intake, advice and brief service:**

At the heart of access to legal services is the intake system. For example the Legal Aid office in Gallup testified that they do intake every 2 weeks on Tuesday and then offer intake every two weeks on the Zuni reservation on Thursday. A former legal aid attorney testified that when he worked at legal aid they would have intake one day per week, and 20 – 60 people would be “lined up around the block.” He believes people need to meet face to face and that many clients do not have telephones. Several clients testified that they had received services from the statewide telephone helpline, Law Access New Mexico, and that without these services they would have received no legal assistance.

Several people testified that traveling long distances is a serious access to justice issue for clients. The wife of a disabled man testified she traveled 160 miles round trip to Roswell to try and get legal help for her husband.

In the 1970s when legal service programs were first developing, the model was the “neighborhood law office” – primarily for urban centers. Not much consideration was given to developing services in rural areas. Yet today, particularly in New Mexico, the focus is on rural delivery of legal services. Consequently, we have tried to develop a unified system merging telephone helpline services with representation services. The testimony established that there are great misconceptions about telephone helpline services.

### **c. Substantive Areas Where More Representation Is Needed.<sup>78</sup>**

#### **What we heard about Systemic Litigation/Policy Advocacy:**

Litigants, attorneys, judges, court personnel and legal advocates offered a wide range of suggestions for systemic and policy changes. While much of the testimony dealt with the need for procedural changes to the system, such as simplified rules, there were a number of areas that suggested a need for change in substantive law such as predatory lending, kinship guardianship, lack of affordable housing, and immigration<sup>79</sup>.

#### **What we heard about Consumer Law:**

People need help with the payday loans: many are trapped in loans that are continually recycled at ever higher interest rates. A Gallup legal services attorney testified that in the past New Mexico law protected the family vehicle but that provision no longer exists. In Gallup, 60 percent of the cases are debt/consumer cases and 75 – 80 percent of these result in default judgments. Recent changes in bankruptcy law are to the detriment of consumers. People also testified that clients need help to defend debt collections and deficiencies. A DNA attorney testified that many people are extended credit by used car sales persons although these people have insufficient income to repay the loan; the car is then repossessed and the consumer is faced with a deficiency lawsuit, even though the loan should never have been made in the first place.

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<sup>78</sup> We also heard about substantive areas of law which the providers think are in need of more representation. The provider survey listed in order of frequency the following substantive areas domestic relations, including child support & child custody, domestic violence, predatory lending practices, public benefits, children’s guardianship, consumer issues, homelessness, immigration, and landlord tenant. Other areas mentioned by no more than one respondent were: adult guardianships/conservatorships, economic development, employment – wrongful termination, environmental justice, farm worker issues, health care access, land use, labor issues (other than employment & unemployment), low wages, quality criminal representation, and tax policy.

<sup>79</sup> For a comprehensive report on the legal issues facing immigrants in New Mexico see the report prepared by the New Mexico Center on Law & Poverty entitled *Issues Facing New Mexico's Immigrant Community*, available at <http://www.nmpoertylaw.org/resources.htm>.

**What we heard about Family Law issues:**

Grandparents raising grandchildren need help. A power of attorney often is not enough protection to the grandparent because it is revocable by the parent. Grandparents with immigration/legal status problems are afraid to go to court. As parents are incarcerated there should be an accompanying legal procedure to give custody by the court to grandparent or other family member. Likewise it was suggested that there should be a three strikes law for parents so that on the third drug violation their children are legally placed elsewhere.

Several people testified about frustrations with the Children Youth and Family Department and Child Support Enforcement Division. CSED is not helpful in obtaining support for clients, and their process is too long. Also, the Child Support Division is not helpful to clients in obtaining support. Some people decide to contract with a private attorney who then gets paid \$3000 - \$5000 of the child support collected.

**What we heard about Domestic Violence:**

There was considerable testimony regarding domestic violence problems. Specifically, advocates want courts to allocate funds on behalf of victims so they can hire and pay attorneys when DV perpetrators hire attorneys. There should be more DV offender programs. Courts should follow the law and enforce the firearm restriction so that the DV offender does not have access to a gun. Advocates for rape victims suggested that a civil protection order should be made available for rape and stalking victims.

**What we heard about Public Benefits:**

Generally throughout New Mexico people seeking public assistance do not have their basic needs met, usually cannot get legal assistance to challenge decisions in these cases, and often need help with income support issues, social security cases and food stamps. A quadriplegic mom testified about her difficulty with a number of legal issues over the years including public benefits access and independent living issues. She received help from NMLA but now she advocates on behalf of others with disabilities who need legal help. Several other disabled clients including a senior with major depression testified about problems accessing foodstamps and public benefits.

**What we heard about Migrant Farm Worker issues:**

NMLA testified that they currently have only 3 staff members (only 1 attorney) working on migrant farm worker cases and they need more advocates to handle all the legal issues. Most workers are in Dona Ana and Luna counties. The average worker has an income of \$7,000 and has limited education and limited literacy skills. Most do not know how to access legal services or their rights or remedies. Many are US citizens but most do not understand English. The farm workers have a variety of legal issues beyond just their labor issues including benefits issues, landlord/tenant, foreclosures and access to services. The recent Katrina tragedy has adversely affected jobs in the Southern states, consequently traveling migrant workers are competing for fewer jobs.

**What we heard about Healthcare Access:**

A client testified that she could not get her health plan to approve and cover needed surgery. After being refused surgery, she filed grievances and tried to battle this herself but lost. Then she went to Senior Citizens Law Office and they helped her resolve the matter. An attorney at the Senior Citizen's Law Office further testified about this case and explained that this client qualified for 5 Medicaid categories, but HMOs usually will not evaluate eligibility to look for categories of coverage; rather, they will deny coverage if possible. Public benefits programs are very technical and difficult for clients. Most private attorneys are not familiar with this area of the law so legal services programs are the main avenue for legal help.

**What we heard about Disability Issues and Access for Persons with Disabilities:**

Some people testified that there were still barriers to physical access for some courts in New Mexico. We heard testimony concerning the need for sign language interpreters, the need for Braille materials in hard copy and electronic format, and the need for more accessible TTY devices. Persons with disabilities have similar problems as others, such as public benefits, educations, housing, domestic violence, and termination of parental rights.

**What we heard about Special Education:**

Pegasus Legal Services testified to the significant unmet need to provide legal representation to parents of children with special needs. In these cases, children are not receiving required special education services, including therapy, physical therapy and other ancillary services, in the schools throughout the state; these families are entitled to a hearing process to challenge these denials. However, there are few attorneys with expertise in this area and it is difficult for parents to proceed without assistance of counsel.

**What we heard about Homelessness:**

A homeless advocate testified that the fastest growing population of the homeless is women with children. Homeless people are a subset of the poor, and homelessness is largely caused by poverty and the lack of affordable housing, but it is difficult to single out one factor. Unchallenged evictions are another main cause of homelessness. We also heard about the overwhelming lack of affordable housing that exists in many communities. The existing legal aid system is geared toward working with clients with reliable contact information and has not adequately addressed the practical challenges of maintaining a client relationship with a homeless client. Pegasus Legal Services testified about the legal needs of homeless and runaway children. The children are often homeless because their parents are drug addicted. These kids need legal help related to housing, the school system and public benefits.

**What we heard about Housing:**

A client in Las Cruces testified that she had never used legal services before and found out about Law Access from a worker at the homeless shelter where her niece was staying. Because of the help she received from Las Access, the client and her husband went to court by themselves and were able to get their housing issues resolved. A senior in

Albuquerque testified that she was having mortgage problems. She called Senior Citizen's Law Office and they helped her over a period of two years and finally the case was resolved and her house was saved. An SCLO attorney testified that they were one of very few offices handling mortgage foreclosure cases. Many poor people have housing problems, including evictions and lack of available affordable housing; we heard testimony that the ability of legal services to provide representation in many of these cases is limited because of the overwhelming need. Most tenants who face eviction go to court alone and do not know their rights, or, simply do not go to court to contest the eviction.

**What we heard about Water Rights and Land Grant Issues:**

A NMLA attorney in Santa Fe testified about the need for legal services for land grant issues and water rights. The legal issues include easements, water rights and adverse possession. There is a recent change in NM law regarding acequia associations which will require 600 – 800 associations to revise their bylaws. These are very specialized areas of the law. New Mexico is unique because a portion of the population owns property but they have very low incomes. They sustain themselves primarily through agricultural means. The Director of the New Mexico Acequia Association testified about the legal challenges of the Association as well as individuals with water rights issues. She testified that when there are proposed statutory changes the Association needs legal assistance to analyze the proposals. Also, rich communities put enormous pressure on poor rural communities. Another water rights advocate stated that legal assistance is also needed in central and southern New Mexico.

**d. Pro Bono and Volunteer Services.**

Virtually every public hearing had testimony concerning the limited availability of local pro bono attorney services. The court clerk in Carlsbad testified that to her knowledge there are no attorneys offering pro bono services in the area. Likewise an attorney in Roswell reported that local attorneys are not interested in access to justice. In Las Cruces a judge testified that the same attorneys volunteer over and over again, and we need to create incentives for pro bono. A certificate of appreciation is not a good enough incentive. A judge in Socorro testified that to his knowledge there were 2 attorneys who assisted on about 3 pro bono cases per year and there are no pro bono attorneys in Truth or Consequences or Reserve.

It is even more difficult to attract and train volunteer attorneys for specialty areas such as water rights and migrant farmworker cases. Also, programs that legal services programs used to rely on, such as Vista and Reggie programs, are defunct.

We also heard some good news. The Mayor of Las Cruces reported that after listening to the testimony he would recommend that the city attorneys offer pro bono services. There was a report that the Taos pro bono program was “up and walking” but needed to organize some training for volunteer attorneys.

## **2. Issues faced by client populations.**

### **a. Web Based Services:**

Web based services are helpful to many but are not at all helpful for others. Court personnel, litigants and legal and social service providers testified that for some people web-based information and services are helpful. More web based information should be made available particularly for rural people because of very limited locally available information. Likewise it is often easier for disabled and elderly people to get information from the web than it is drive a long distance to a physical location. One person testified that courts should examine the possibility of e-filing for landlord tenant cases.

On the other end of the spectrum, several people testified that they did not have access to a computer or did not know how to access information on the web. Concerns were expressed about disabled people with limited cognitive capacity or elderly with little or no computer experience. Limited English people have fewer options for obtaining web based legal information in their own language.

People testified about a wide range of computer abilities, interest and access in web-based information. For a large number of people web-based information is easy to access. For others, web-based services offer little. For example, some legal service programs around the country are looking at web-based assistance to certain disabled populations, specifically using web-chat as a way to provide services to hearing impaired. Other states have developed user friendly court-based kiosk systems with interactive forms and information. A California legal aid program developed an excellent web-based interactive system for low income people to file tax forms. That interactive program is available to English and Spanish speakers.

### **b. Pro Se Services:**

This section first presents general comments we heard regarding pro se and court services, followed by specific comments regarding family and domestic violence pro se issues and then housing, consumer and Magistrate/Metro court pro se issues.

Many, many people testified about the “pro se phenomenon.” The situation is difficult for courts and litigants alike. One judge even commented on the confusion in “labeling”: unrepresented, self represented, pro se, and self help. Whatever term is proper, the whole situation is confusing to courts, litigants, pro bono attorneys and legal services programs. The major underlying question is responsibility. Is pro se primarily a court responsibility? If so what is the role of staff legal aid programs and pro bono programs?

There are special problems for family law pro se cases in district court. On the other hand Metro and Magistrate courts deal almost exclusively with pro se litigants in civil cases.

For Special populations face even more barriers. Several people testified about the need for Spanish speakers to have access to the courts and their need legal information and assistance in Spanish and Spanish interpreters once they are in court. Court personnel in Taos testified that language assistance beyond Spanish is also needed. Likewise, disabled people need physical access to the courts. Some also need language interpreters, sign language interpreters and Braille materials.

Litigants themselves testified about a major underlying question – Are courts “fair” to pro se litigants? One pro se litigant testified that pro se people do not have access to the full legal record. A senior testified that there is no real small claims court – at least not that she understood. One litigant stated that Municipal judges should be attorneys. Some people advocated for more mediation services.

On the other side of the coin, judges and court personnel testified about the problems that they experience. Specifically, that judges and court clerks cannot provide legal advice, yet clearly people need direction. A Second Judicial District judge expressed concern about court-based services for pro se. The judge suggested that the AOC should fund off-site services for pro se – this sentiment was echoed by some legal aid personnel as well. Several people questioned whether pro se services should be “housed” at the courthouse or off-site. The Second Judicial District pro se director testified about the court’s program. This program uses primarily paralegals for pro se assistance, but this is difficult because the paralegals require close attorney supervision. Further, the court based programs provide some assistance and direction but cannot provide legal advice and counsel – which is often what people need. Consequently, the pro se program is often providing people with follow up referrals but it is difficult to “match” a person with a program with any degree of accuracy.

#### **What we heard about Pro Se Family and DV Issues:**

Several people suggested that DV advocates should be permitted to testify in court or assist DV victims in the court room. An Albuquerque judge recommended creating a DR paralegal certification to allow paralegals to help close the assistance gaps on helping people fill out forms. One program in Roswell said that they provide legal assistance with filing divorces. When questioned, they reported that they have no attorney on staff. Instead, non-attorney personnel help clients complete forms then “a local attorney reviews the forms.” This program reported receiving funding from the Governor’s office.

The Carlsbad court clerk testified that she is designated to assist pro se litigants and domestic violence victims. However, the only assistance she can offer is a “domestic relations packet” which has some information on local court rules. Carlsbad also reported that because of the judge’s limited availability that there is a problem in obtaining judge’s signatures for domestic violence restraining orders.

A judge in Las Cruces reported that the Third Judicial District has a pro se clinic operated by attorney volunteers and there are forms available at pro se clinics that they operate.

Court personnel cannot provide legal advice, only forms. Litigants need legal advice on how to complete forms and what to do to move their case along.

A judge in Albuquerque testified that 50 percent of domestic pleadings are prepared by self-represented litigants, but self-represented litigants who have not consulted with an attorney do not know what rights they are forfeiting. The judge also cautioned that the court must be careful on use of ADR. Likewise, a judge in Grants testified that 90 percent of DV cases come to court pro se and 50-60 percent of DR cases are pro se. There was testimony that the State should provide support for legal aid in these cases. Existing programs cannot serve the need.

Santa Fe court personnel testified that their divorce packet includes a motion for interim allocation of income. If a parenting plan is not filed within 60 days, then an automatic order of mediation is issued. About 20 percent of mediations need Spanish interpreters. They have one pro se clinic scheduled each month and a self help desk. Many people testified that the information received at the desk was not accurate.

A self-represented litigant testified that the court should emphasize mediation and limit appointments of experts and guardian ad litem because they are costly, do little work, and are not helpful.

**What we heard about Pro Se Adult Guardianship/Conservator issues:**

An Albuquerque judge testified regarding problems for adult guardianship and conservator cases. The forms are too difficult for most pro se people. Also the law requires appointment of a GAL which is very costly and many cannot afford. Further, the state office of guardianship has two year waiting list.

**What we heard about Magistrate and Metro Court matters:**

A Metro Court judge testified that of the 15,000 cases per year in Metro court 90 percent are pro se. This judge recommended developing more user-friendly interactive forms, possibly through a kiosk at the court house. Streaming video can be used to explain court procedures. Still, people need in-person help. A Gallup court employee suggested increased judicial education and recommended eliminating legal language in pro se forms.

**PROVIDER SURVEY OBSERVATIONS**

As mentioned above, thirteen providers who represent the major providers of legal aid in New Mexico responded to the Commission's survey. The responses provide information about problems with the current state of legal aid delivery and on perceived impediments facing the client communities.

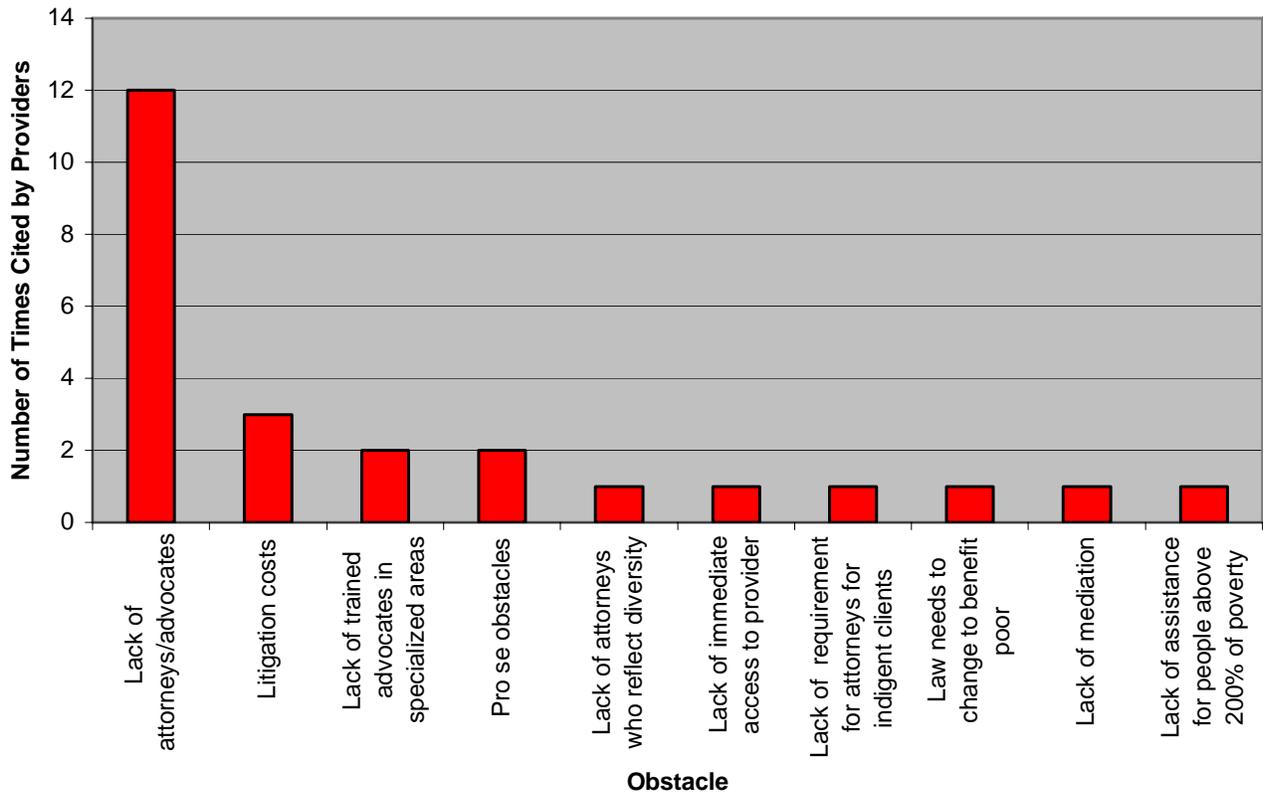
**Problems with the Delivery System**

The provider survey identified as a significant obstacle the lack of attorneys or advocates. This lack included too few legal aid attorneys and insufficient volunteers from the private

bar. This lack particularly impacted rural areas. The survey and the hearings identified the lack of an effective statewide intake center that provided applicants with immediate access as a major problem. Some types of legal problems were identified as being particularly lacking in advocates: family law, immigration law, and predatory lending. The survey and the hearings identified as a problem the lack of a requirement that civil indigents be provided an attorney. A number of people at the hearing testified that the court system needs to be designed to serve pro se litigants – to provide basic legal information, forms and materials. Certain courts were identified as actively discouraging pro se litigants. The survey responses also stated that mediation is not sufficiently available.

There are difficulties in trying to quantify the relative magnitude of the various problems, but based on the provider survey we looked at the number of times each identified problem was cited by the providers. Figure 5 shows the results of this quantification.

Figure 5. Delivery System Problems

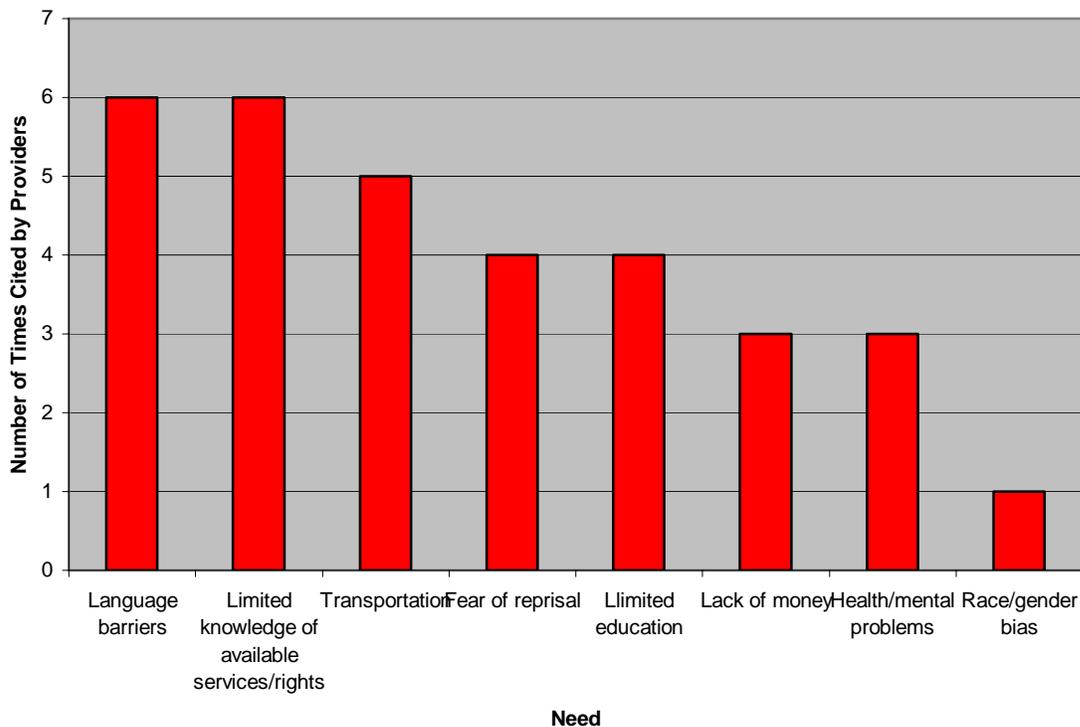


## Issues Faced by Client Populations

The provider survey identified distance and lack of adequate transportation as a major barrier to access. Language barriers were also identified at the hearings and in the survey as a significant obstacle to access. Lack of education was also noted in the survey. Fear of reprisal from a variety of sources was identified at the hearings and in the survey. Limited knowledge of available services or legal rights was mentioned in the hearings and in the survey. For certain populations, health and mental problems limit ability to access help. The survey also listed racial and gender bias as an obstacle to meaningful access. The fees charged by the courts were also noted during the hearings as a barrier to access. The provider survey reported that there is a lack of uniformity in the procedures for obtaining free process and a lack of similarity of treatment of applications for free process. In some districts there is hostility toward such applications.

As with quantifying problems with the delivery system, quantifying the relative magnitude of the problems faced by the client community is difficult. Again, based on the provider survey we have quantified the responses.

Figure 6. Client Issues



## **SPECIFIC RECOMMENDATIONS**

### **Adopt the Pro Bono Plan**

Attached as Appendix 2 is the part of the Ten Step Plan for Improving Pro Bono (“Plan”) that deals with pro bono issues. (A separate part of the Plan deals with pro se issues and will be presented at a later date as part of a comprehensive report regarding the pro se challenge.)

Briefly, the Plan recommends that the Supreme Court undertake the following:

1. Assume oversight of the Plan through the ATJ Commission (Step 1);
2. Establish district court pro bono committees through an amendment to Rule 16-601 NMRA (Step 2);
3. Support creation of a funded support staff to be housed at the State Bar and assist in obtaining funding (Step 3)<sup>80</sup>;
4. Revise Rule 16-601 to require reporting of pro bono hours (Step 5);
5. Revise Rule 16-601 to reflect an annual goal of 50 hours of pro bono work or an annual contribution of \$500 (or a combination of work and donation) (Step 6);
6. Revise Rule 18-201 NMRA to provide MCLE credit for providing pro bono services (Step 7);
7. Authorize the Commission to coordinate efforts to recruit pro bono attorneys and volunteers (Step 8);
8. Authorize the Commission to coordinate efforts of the Bar, the local committees and legal aid providers to establish a website to offer and facilitate pro bono opportunities (Step 9).
9. Authorize the Commission to promote recruitment of law students for pro bono service (Step 10).

### **Authorize Pilot Project for Uniform Free Process Procedures**

In addition, the Commission recommends that the Court authorize continuation of a pilot project to test adopt a uniform means of obtaining free process that will apply in all civil cases across the state. Attached hereto as Appendix 3 are a proposed rule and forms to be used in the pilot. The forms are being tested in the Second Judicial District, Metro Court, and the Court of Appeals.

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<sup>80</sup> In anticipation of the Court’s action, the State Bar Foundation has obtained a contingent contract with the CLSC to fund a portion of this position, and with the approval of the Court and help from the Administrative Office of the Courts, a State Justice Institute grant has been sought to match the CLSC contract. This position would be housed at the State Bar.

**Authorize the AOC to Seek Funding for Full Time Staff Support for the ATJ Commission**

During the 2006 legislative session, \$65,000 was appropriated for the ATJ Commission, but the appropriation was vetoed by the Governor. Currently, the Commission is being staffed part-time by AOC personnel. The magnitude of the problem, however, is such that a full time person is needed to adequately accomplish the purposes of the Commission. The Court should authorize AOC to seek such funding. It was estimated that this amount would be approximately \$100,000.

**Support Efforts to Secure an Appropriation for Civil Legal Services**

It is clear that there needs to be a major infusion of funding for civil legal services for low income individuals. The ATJ Commission in conjunction with the AOC and members of the provider community and members of the State Bar's Legal Services and Programs Committee will need to present a concerted, coordinated effort to obtain funding through a State appropriation. The support of the Court in this endeavor is critical. During the next few months the Commission will focus on funding both from the perspective of seeking an appropriation from the legislature to support civil legal aid and of including funding for pro se services within the unified budget for the courts.

## **FUTURE ACTIVITIES**

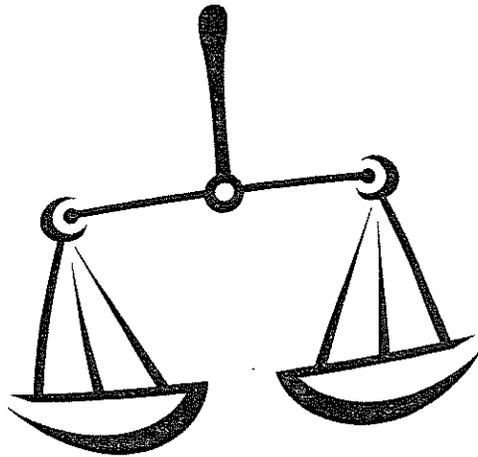
During the next year the Commission intends to take the necessary steps to follow through on its recommendations that are approved by the Court. In addition, the Commission intends to prepare a comprehensive report on the pro se challenge. We will continue to review rules and legislation to determine what procedures or statutes might be changed to assure better access by low income people to the legal system. We will continue with our efforts to look at the delivery system and to devise a comprehensive plan for improving the delivery of legal aid to low income individuals and communities. We shall also try to provide information to court staff and judges about the availability of legal aid and about the importance of equal access. We will also try to educate lawyers on this issue through the use of a video presentation, and we will undertake a media campaign to let the general public know of the need to ensure access to the civil legal system by people living in poverty.

New Mexico Commission on Access to Justice Membership

Justice Petra Jimenez Maes, Co-Chair, Supreme Court of the State of New Mexico, Santa Fe (2004 to present)  
Sarah M. Singleton, Co-Chair, Montgomery & Andrews, P.A., Santa Fe (2004 to present)  
Angelica Anaya Allen, Office of the Attorney General, Albuquerque (2004 to present)  
Honorable George Anaya, Jr., Magistrate, Santa Fe (2005 to present)  
Hector Balderas, House of Representatives, Wagon Mound (2005 to present)  
Kathleen Brockel, Law Access New Mexico, Albuquerque (2006 to present)  
Christine Chandler, Los Alamos National Laboratory, Los Alamos (2004 to present)  
Rosalie Chavez, New Mexico Legal Aid, Bernalillo (2004 to present)  
F. Michael Hart, Martinez, Hart & Chase PC, Albuquerque (2004 – 2005)  
Cisco McSorley, Senate, Albuquerque (2004 to present)  
Karen J. Meyers, Aguilar Law Offices, Albuquerque (2004 to present)  
Honorable Nan G. Nash, Second Judicial District, Albuquerque (2004 to present)  
Thomas W. Olson, Montgomery & Andrews, P.A., Santa Fe (2006 to present)  
Melissa J. Reeves, Sandenaw, Pizza & Anderson PC, Las Cruces (2004-2005)  
Stanley C. Sager, Retired, Albuquerque (2004 to present)  
Dean Suellyn Scarnecchia, University of New Mexico Law School, Albuquerque (2004 to present)  
Sharon Shaffer, Farmington (2004)  
Gilbert G. Valdez, Attorney, Las Cruces (2004 to present)  
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Virginia R. Dugan, President State Bar, Albuquerque (2005)  
Charles J. Vigil, Immediate Past-President State Bar, Albuquerque (2004)  
Joey Moya, Chair Task Force on Self Represented Litigants, Ex Officio Member (2004 to present)  
Susan G. Dye, Administrative Office of the Courts, Santa Fe, Staff

# The New Mexico Ten Step Plan for Improving Access to Justice

A Proposal  
Submitted to the Commission on Access to Justice  
by its System Planning Committee, Christine Chandler, Chair,



The Committee thanks the following for their work and effort  
in producing the Ten Step Pro Bono Plan, which this plan revises:  
New Mexico Bar Association, Legal Services and Programs Committee  
Judge Frank Sedillo, Kathleen Brockel – Co-Chairs  
Richard Spinello, Chair Pro Bono Subcommittee  
Tina Sibbitt, Chair Pro Se Subcommittee  
Angelica Anaya-Allen, Chair Attorney Incentives Subcommittee  
Bryan J. Davis – Judicial Involvement Memo  
Joey Moya – Draft Rule Changes

March 3, 2006

APPENDIX NO. 2  
ATJ REPORT  
to  
SUPREME COURT  
April 19, 2006

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## Summary of Proposed New Mexico Ten Step Plan for Improving Access to Justice

**Rationale.** The most successful and effective statewide plans for improving access to justice by low-income persons come from states in which the judiciary assumes a leadership role. For that reason, the Ten Step Plan calls upon the New Mexico Supreme Court and the District Courts to exercise major roles in implementing and overseeing the Plan. The Plan also proposes rule changes and expanding pro bono participation.

**The Plan.** The ten steps in the proposed Plan are divided into three central elements:

- A. Involvement of the judiciary;
- B. Change of the Rules;
- C. Expansion of pro bono participation.

### The Elements.

- A. Involve the judiciary by requesting the New Mexico Supreme Court to:
  - 1. Assume responsibility for general oversight of the Plan; appoint the Access to Justice Commission to receive and evaluate reports and requests on its behalf, and to report to it.
  - 2. Establish district court pro bono committees by an addition to current Rule 16-601 of the Rules of Professional Conduct relating to pro bono public service.
  - 3. Permit the housing of Plan support staff in the Administrative Office of the Courts (AOC)(or other appropriate location), approve a budget and assist the Commission in seeking financial support.
  - 4. Endorse the establishment of a statewide Office of Pro Se Services that will coordinate statewide pro se services.
- B. Change the Rules of Professional Conduct:
  - 5. Revise Rule 16-601 of the Rules of Professional Conduct to reflect a reporting requirement for attorney pro bono services.
  - 6. Revise Rule 16-601 of the Rules of Professional Conduct to reflect a goal of 50 annual pro bono service hours or an annual contribution of \$500.
  - 7. Revise Rule 18-201 of the Rules of Minimum Continuing Legal Education to provide MCLE credit to attorneys providing pro bono services.
- C. Expand participation through ongoing Commission study and action, including:
  - 8. Coordinating recruitment of pro bono attorneys and other volunteers with the courts, the New Mexico Bar Foundation (Bar Foundation), and statewide providers.
  - 9. Establishing an internet-based pro bono case recruitment program via website or email.
  - 10. Promoting participation by law students, new lawyers and Law Firms.

# Plan Goals And Recommendations

## Goal of the Ten Step Plan

The goal of the New Mexico Ten Step Plan (the Plan) is to improve access to justice for persons of limited means.

## Introduction

The Plan endeavors to meet this goal by involving the judiciary, by promoting opportunities for attorneys, paralegals and law students to provide pro bono civil legal services, and by improving the delivery of legal services through regional and statewide programs integrating pro bono and pro se support and services provided by courts, judges, attorneys, paralegals and legal service providers.

The Plan recommends changes to the Rules of Professional Conduct to call for the establishment of an access to justice committee in each Judicial District and charging each committee with establishing a pro bono plan. The Plan recommends two additional changes to Rule 16-601: one change to reflect an increase in suggested donations in lieu of pro bono hours; a second to recommend required reporting of pro bono work. The Plan also recommends a revision to Rule 18-201 to grant limited CLE credits for attorneys providing pro bono work.

## Development of the New Mexico Ten Step Plan

The State Bar of New Mexico Legal Services and Programs Committee (LSAP) and the New Mexico Commission on Access to Justice System Planning Working Group have worked together to develop this Plan. The Plan has been approved by the New Mexico Board of Bar Commissioners and is now submitted to the Access to Justice Commission, with non-substantive revisions made by the Systems Planning Working Group of the Access to Justice Commission, which offers it to the Commission for its consideration for final submission to the New Mexico Supreme Court.

## Problems Addressed by the Plan

New Mexico has a high poverty population with a high number of legal problems and limited free and low cost legal services. A recent report to the New Mexico

Commission on Access to Justice notes that 25% of New Mexico residents live at or below 125% of the federal poverty guideline. In dollars and cents this means that 25% of New Mexico families with four people have a total annual income less than \$24,000. The report estimates that among this poverty population there are 450,016 legal needs annually and that 72% of these legal needs go unaddressed. *Please see Attachment A.*

In 16 of New Mexico's 33 counties there are 25 or fewer attorneys – some counties have no attorneys at all. New Mexico's high poverty population, spread over a large geographical mass with a limited number of attorneys in rural areas, results in limited legal services to the poor in many parts of the state. While New Mexico has about a dozen nonprofit legal services organizations working together to provide legal services to the poor, demand exceeds capacity. Those driven to represent themselves receive little or no assistance.

Court programs in place work in conjunction with the legal service programs to offer a variety of legal services throughout the state. However, the current delivery system can be improved with the implementation of a comprehensive pro bono plan to help meet the legal needs of the poor.

While some of New Mexico's problems may be unique to this state, the issue is far broader. The ABA House of Delegates has addressed it by adoption of a Pro Bono Resolution. *See, American Bar Association State Pro Bono Reporting: A Guide for Bar Leaders and Others Considering Strategies for Expanding Pro Bono*, August, 1999, update August 2002, reproduced at the ABA site: <http://www.abanet.org/legalservices/probono/reportingguide.html>

*The Guide says of the resolution: In 1995, the ABA passed a resolution urging national, state and local bar associations to make the expansion of pro bono legal services a critical priority. The resolution encourages bar associations "to develop effective and innovative strategies to promote pro bono service and to allocate sufficient bar resources to ensure that these strategies can be effectively implemented."*

**STEP ONE OF THE TEN STEP PLAN:**

The New Mexico Supreme Court will assume responsibility for oversight of the Plan and will appoint the Access to Justice Commission to receive and evaluate reports and requests on its behalf, and to report to it.

**Implementation of Step One:**

- a. The Access to Justice Commission will receive all reports, requests for funding and support for district plans, will evaluate the same and will report and make recommendations to the Court.
- b. To the extent that funding is sought, the Commission will be coordinate funding requests through the Courts' unified budget process.

**PROBLEM ADDRESSED BY STEP ONE:**

The lack of centralized judicial oversight and management of a statewide plan to establish court provided services and to define their relationship to community legal service providers and attorney pro bono services compounds the current gap between legal needs and existing services in New Mexico. As discussed in the Problems Addressed by the Plan section above, legal service providers and court-provided services are currently overwhelmed by the sheer number of legal needs of low income New Mexicans. In addition, such providers may not be aware of services provided by other organizations, resulting in inefficient or no referrals, as well as in perhaps unnecessary competition for limited funding when referral would be the more logical option. Provider services may or may not include attorney pro bono legal services. Although the New Mexico Supreme Court has successfully approved a limited number of statewide legal forms for pro se use in simple matters, judicial leadership now rests largely in each judicial district struggling to manage pro se litigants with extremely limited resources, personnel and referral options to organizations or to pro bono attorney services. Uncertainty as to whether the New Mexico Supreme Court would approve or support such management efforts compounds these struggles.

## 1

**Judiciary:**

*Request the  
New Mexico  
Supreme Court  
To Oversee  
Implementation and  
Administration of  
the New Mexico  
Ten Step Plan*

**RATIONALE FOR STEP ONE:**

Following the 1995 ABA resolution several states implemented statewide pro bono plans. The most successful included the state supreme court and the judiciary in leadership roles. For that reason, the proposed Ten Step Plan begins with oversight by the New Mexico Supreme Court.

**STEP TWO OF THE TEN STEP PLAN:**  
**The New Mexico Supreme Court will establish district pro bono committees in each judicial district.**

**Implementation of Step Two:**

- a. The New Mexico Supreme Court will charge the Chief Judge in each judicial district with the responsibility of appointing a local access to justice committee, to include pro bono and pro se elements, and convening the first meeting.
- b. The Bar Foundation pro bono coordinator and the AOC's ATJ project director will provide support to the judicial district committees.
- c. Each judicial district committee will initially be local attorneys, district court, metro, magistrate, and tribal judges, legal service providers, and other interested participants.
- d. Each judicial district committee will be charged with selecting a chair and with developing a local plan within a time period established by administrative order of the Supreme Court issued under revised Rule 16-601.
- e. Each judicial district committee will establish a local plan for improving access to justice by persons of limited means; the local plan will identify local needs, establish eligibility criteria and address the division of responsibility among the courts, the local bar association, the private bar, legal service providers and the public.
- f. Each judicial district plan will encompass opportunities to provide direct pro bono representation, unbundled services, pro se assistance and systemic advocacy. It may also incorporate law student and new lawyer mentoring, public legal education, and participation in activities for improving the law and the legal system. Pro bono activities may also include serving on Bar committees or on the boards of pro bono committees or legal service programs.
- g. Initially, the Plan will be activated in the First, Second, Third, Eighth and Eleventh and Thirteenth Judicial Districts, and then implemented into all the remaining Judicial Districts.

2

**Judiciary:**  
*Establish a local committee in each judicial district.*

- h. Each judicial district committee will submit its plan, once established, to the New Mexico Supreme Courts' Access to Justice Commission (the Commission), the body designated by the New Mexico Supreme Court for review of such plans and for other responsibilities.
- i. Each judicial district committee will submit annual reports with benchmark assessments and resource requests to the Commission.
- j. The Commission will report annually to the New Mexico Supreme Court.

#### **PROBLEM ADDRESSED BY STEP TWO:**

Although centralized judicial oversight is essential to this Plan as discussed in Step One, such oversight must be flexible enough to take into account the very different legal needs and existing services in different parts of New Mexico. For example, low income people in urban areas might have transportation by car or by public transport to go to the court or to an organization's office, whereas the distances in rural or isolated areas might make such travel impossible. Such needs are best addressed by the various judicial districts, which are also more familiar with existing service providers and attorneys. Judicial leadership on both the New Mexico Supreme Court and local levels is necessary not only to encourage attorneys to provide pro bono services, but also to communicate to all parties involved that the provision of legal services to those in need, or Access to Justice is recognized as an obligation and a public duty at all levels of the New Mexico judiciary and legal community.

#### **RATIONALE FOR STEP TWO:**

The key provision of proposed Rule 16-601 is the convening of the judicial district committees around the state by the chief district judges, charged by the New Mexico Supreme Court with developing local plans to help meet the legal needs of the poor in that district. The rationale for Step Two is similar to that of Step One and is intended to encourage local bar committees to focus on access to justice issues within their districts.

## 3

**Judiciary:**  
*Ten Step Plan  
 Implementation –  
 Staffing, Funding,  
 Training and  
 Other  
 Considerations*

**STEP THREE OF THE TEN STEP PLAN:**

The New Mexico Supreme Court will support efforts taken through the Commission to identify and obtain funds to support the pro bono plan implementation, train staff, and assist judicial district committees.

**Implementation of Step Three:**

- a. The Commission will identify funding sources to obtain additional funding to support Plan implementation.
- b. The New Mexico Supreme Court will support the Bar Foundation with its plan to house the pro bono coordinator.
- c. The Commission will explore, in coordination with the State Bar of New Mexico or the Bar Foundation, a means to provide malpractice of insurance that would include private attorneys who provide pro bono services.
- d. The Commission will assist the courts, as requested, with training on the local bar committees and on the Judicial Code of Conduct as it applies to support of the Plan.
- e. The Commission will establish mechanisms for soliciting local committee reports, evaluating the same, and reporting to the New Mexico Supreme Court.

**PROBLEM ADDRESSED BY STEP THREE:**

Funding, staffing, training and support for the judicial district committee structure will need to be established. Funding sources are limited and drawing upon them should not adversely impact current efforts to fund legal services programs. If the Commission determines that existing funding sources could be more effectively leveraged, it may pursue sources such as IOLTA, MCLE, and the Civil Legal Services Fund. The Plan contemplates a program evaluation component will need to be established and implemented by the Commission.

**RATIONALE FOR STEP THREE:**

The Plan contemplates a first year start-up for staffing, training and support of the judicial district committees. With the Pro Bono coordinator being housed by the Bar Foundation, administrative costs should be held in check.

### Malpractice Insurance for Pro Bono Activities

The Commission will coordinate with the State Bar of New Mexico or the New Mexico State Bar Foundation to explore a malpractice insurance coverage that would include malpractice coverage for private attorneys providing pro bono assistance outside a legal service program or agency.

- Attorneys would be required to register their pro bono case with the foundation to bind coverage if available.
- This is to encourage private attorneys to provide pro bono assistance in a wide variety of cases and assist attorneys with the informal pro bono assistance they provide.
- Attorneys providing pro bono assistance in conjunction with a legal services provider should be covered on that provider's malpractice insurance plan.

### Training

The judicial district committees, judges, local bar associations and others will need some training to assist them to convene the district court committees, recruit and train pro bono attorneys and implement a district plan. The Commission will plan and coordinate training with the Bar Foundation and MCLE. Additionally, as the Plan is implemented into all of the judicial districts, the experience of the participants in the pilot will be built upon to train and assist those in the other judicial districts.

Some courts already have pilot projects operating and they also can participate in training. For example, over the last several months the Taos Bar Association, Judge Peggy Nelson of the 8<sup>th</sup> Judicial District Court, the New Mexico Legal Aid Taos office and UNM Law Student Maija Blaufuss have been working together to establish a pro bono system in Taos. Albuquerque Metro Court Judge Frank Sedillo is working with UNM Law School and New Mexico Legal Aid (NMLA) to pilot a project involving UNM law students in representing parties in landlord tenant cases. NMLA attorneys are supervising the students and Law Access New Mexico is assisting NMLA in identifying appropriate cases for the project. Those involved with these pilot projects have expressed willingness to assist the district committees.

Judges may have questions concerning their role in organizing and promoting attorney participation in district

committees, and training should include this aspect. The Code of Judicial Conduct sets the parameters for judges' activities. Rule 21-500 NMRA allows judges to participate in "advocational activities," such as lecturing concerning the law, the legal system, or the administration of justice and "civic or charitable activities," such as state appointed commissions to "improve[e] the law, the legal system, or the administration of justice." The rule encourages judicial involvement in advocational, civic and charitable activities. However, a judge may not participate in membership solicitation nor improperly use the prestige of the judicial office. Rule 21-500 allows and appears to encourage judicial participation in the judicial district committee plans. Other states considering similar issues have determined that judges can promote pro bono services and help on district committees.

#### Evaluation

As changes are implemented a system will be developed to evaluate success. The New Mexico Supreme Court will establish mechanisms for evaluation of changes and assigning this task to the Access to Justice Commission. The Commission will create a series of benchmarks to measure the success or failure of the plans and suggest ways for improving each component.

**STEP FOUR OF THE TEN STEP PLAN:**

Recommendations relating to coordination of pro se services are reserved for a later submission as part of a comprehensive evaluation of resource needs.

**4****Judiciary:***Statewide**Coordination**Of Pro Se**Services*

5

**Rule Change:**  
*Revise Rule  
 16-601 to  
 Reflect Reporting  
 Requirement Of  
 Attorney Pro  
 Bono Services*

**STEP FIVE OF THE TEN STEP PLAN:**

The New Mexico Supreme Court will adopt revisions to Rule 16-601 of the Rules of Professional Conduct to reflect a reporting requirement for attorney pro bono services. (See Attachment B)

**Implementation of Step Five:**

After the Plan has been accepted by the New Mexico Supreme Court, the necessary action to implement the revision will be initiated and followed through by the Commission.

**PROBLEM ADDRESSED BY STEP FIVE:**

New Mexico currently has a purely voluntary pro bono reporting system. In 2003, only 32% of New Mexico attorneys reported pro bono hours on their dues form. Consequently, little is known about pro bono services in New Mexico. Nothing is known about what types of legal problems are addressed or what services are provided or how many clients are assisted.

**RATIONALE FOR STEP FIVE:**

Step Five is based on the assumption that a change in the pro bono reporting rule will not only increase the reporting of pro bono work, but encourage more attorneys to provide more pro bono work. The adoption of the rule will require pro bono reporting. The proposed rule change does not require that attorneys actually provide pro bono service. Attorneys may report zero pro bono hours, but the report must be completed. Other states that have adopted a reporting requirement rule are gathering information on types of services provided, location of services, and numbers of clients served. They report that the information is helpful in encouraging, recognizing and rewarding good service by volunteer attorneys and paralegals, as well as collecting data on the impact of the Plan. A change in the rule now will assist the advance pro bono efforts, particularly by encouraging service within the district court committees.

The draft rule provides for pro bono reports to be kept confidential. The purpose of the data collection is to track improvements and systemic changes. No attorney pro bono reports will be revealed to the public.

The Plan recognizes that rule changes often cause controversy among the bar membership. Therefore additional information is provided about reporting rules in other states. The ABA Pro Bono website reports the following:

- **4 states have mandatory pro bono reporting:**  
Florida, Maryland, Mississippi, Nevada
- **8 states rejected mandatory pro bono reporting:**  
Colorado, Indiana, Massachusetts, Minnesota, New York, Pennsylvania, Tennessee, Utah
- **12 states have voluntary pro bono reporting:**  
Arizona, Georgia, Hawaii, Illinois, Kentucky, Louisiana, Missouri, Montana, New Mexico, Texas, Utah, Washington

<http://www.abanet.org/legalservices/probono/reporting.html>

The ABA Pro Bono website also includes a list of points in favor of a rule requiring the reporting of pro bono hours. Some of those points are:

- Effective mechanism for collecting reliable, accurate, consistent data to evaluate delivery of pro bono legal services to the poor
- Can increase monetary contributions
- Promotes increased access to justice/courts
- Promotes involvement in pro bono services/activities
- Data can send message to non-legal community about their responsibility to fund legal services for poor
- Enables recognition of contributing lawyers
- Facilitates engendering confidence in the bar
- Encourages fulfillment of professional responsibility
- Can raise awareness of opportunities for pro bono involvement.

<http://www.abanet.org/legalservices/probono/reportingarguments.html>

Florida has required reporting of pro bono services since 1993. The ABA reports these findings from Florida:

- the committee system creates local responsibility for using the data acquired through reporting to develop plans and projects
- significant increase in participation, the number of volunteer hours and monetary contributions.

- reporting response rates in recent years range from 87% - 90%.
- the Florida reporting rule measured an increase in participation in the early years of 5% - 7% and then leveled off at 3% - 5%.
- Florida system costs about \$10,000 per year to implement – including collecting and evaluating the data, modifying the membership form, distributing information to bar committees and members.

Steve Scudder, counsel for the ABA Pro Bono Committee  
<http://www2.mnbar.org/committees/lad/minutes-archives.htm>

**STEP SIX:**

The New Mexico Supreme Court will adopt revisions to Rule 16-601 of the Rules of Professional Conduct to reflect a goal of fifty annual pro bono service hours or a contribution of \$500, or a combination of the two.

(See Attachment B)

**Implementation of Step Six:**

This step will be implemented at the same time and in the same manner as suggested for the implementation of Step Five.

**PROBLEM ADDRESSED BY STEP SIX:**

Rule 16-601 of the Rules of Professional Conduct recommends attorneys provide 50 hours of pro bono service or contribute \$350 to support legal services for the poor. Several problems are noted with the current rule:

- 1) the percentage of attorneys reporting pro bono hours is low (32%);
- 2) the average contribution for those contributing to the Equal Access to Justice bar dues check off is \$142.

This Step encourages participation in both pro bono and financial contributions and revisions to the rule will encourage a combination of both.

**RATIONALE FOR STEP SIX:**

The rule revisions reflect a goal of reporting 50 pro bono hours per year or a financial contribution to civil legal services of \$500, or a combination of both.

The draft rule suggested displays a range of suggested options to encourage participation in a variety of ways at the convenience of the attorney. The 50 hours/\$500 combination is intended to provide a simple calculation. For example, an attorney providing 20 hours pro bono service has corresponding financial contribution of \$300. The Commission recognizes that the formula does not represent a one-for-one value for hours of service. The formula is simply intended to provide a simple means of calculating voluntary contributions of time and money.

## 6

**Rule Change:**

*Revise Rule*

*16-601 to*

*Reflect a*

*Goal of 50*

*Pro Bono*

*Service Hours*

*Or A*

*Contribution of*

*\$500 or a*

*Combination of*

*The Two*

Pro bono Hours	0	5	10	15	20	25	30	35	40	45	50 +
Suggested Contribution	\$500	\$450	\$400	\$350	\$300	\$250	\$200	\$150	\$100	\$50	Attorney discretion

The Pro Bono report form should be revised to include an option for the attorney to contribute under this rule. Contributions will be credited to the Bar Foundation.

**STEP SEVEN:**

The New Mexico Supreme Court will adopt revisions to Rule 18-201 of the Rules for Minimum Continuing Legal Education to provide for MCLE credit to attorneys providing pro bono service.

(See Attachment C)

**Implementation of Step Seven:**

This step will be pursued in conjunction with the implementation of steps five and six.

**PROBLEM ADDRESSED BY STEP SEVEN:**

There is little in the way of incentives and rewards that encourages pro bono participation by private attorneys. The Plan proposes that attorneys providing free legal services receive thanks and credit for fulfilling a critical need. One form of this recognition is MCLE credits since they are a requirement of practice in New Mexico.

**RATIONALE FOR STEP SEVEN:**

This step recommends a change to Rule 18-201 to provide up to 4 CLE general credits for attorney pro bono services. The MCLE credit is intended as a mark of appreciation, but also will promote participation. The proposed draft rule allows for one CLE credit hour for every 6 hours of pro bono service donated through an approved provider. Frequently, pro bono cases offer the handling attorneys research and skills challenges at least equal to MCLE lecture opportunities.

Several states, including Colorado and Mississippi, have adopted rules that provide CLE credit for pro bono services. Some of the rules administer the program by monitoring pro bono services through accredited pro bono entities – legal service providers and courts. The programs provide credit for direct client services, law student and new attorney mentoring programs, court administered pro se, mediation programs and more. The rules do not provide for a one to one match of pro bono service hours and credits, instead, 3 to 6 hours of pro bono service equal one CLE credit.

7

**Rule Change:**

*Revise Rule*

*18-201 to*

*Provide for*

*MCLE Credit*

*To Attorneys*

*Providing Pro*

*Bono Services*

The LSAP Committee will draft a CLE Self Study Ethics Program that will instruct attorneys about the New Mexico Professional Conduct rule's goal to provide pro bono legal services to the poor. The committee will seek MCLE approval for the self-study program and will sell the program to raise funds for the Bar Foundation. The Bar Foundation will combine these funds with the pro hac vice funds for distribution to legal services programs.

## 8

**Expand Participation:**  
*Coordinate Recruitment Efforts among the District Committees, the Courts, the State Bar, and Statewide Providers*

**STEP EIGHT OF THE TEN STEP PLAN:**

The Commission will coordinate efforts to recruit pro bono attorneys and other volunteers among the new district Access to Justice committees, the courts, the Bar Foundation, and statewide providers.

**Implementation of Step Eight:**

The Commission, in coordination with the Courts, district committees, the Bar Foundation and statewide providers, will develop and coordinate statewide recruitment efforts.

**PROBLEM ADDRESSED BY STEP EIGHT:**

New Mexico currently has both formal and informal structures in place to provide pro bono assistance. Attorneys at present can offer pro bono services through court-related programs, service providers, and several Bar Foundation programs, and in other ways. This leads to multiple demands on willing attorneys from various sources. Attorney confusion results. Providers report frustration in calling on attorneys who are giving services through other providers.

**RATIONALE FOR STEP EIGHT:**

Unless recruiting efforts in New Mexico focus on how the recruitment will dovetail into the local access to justice plans, current frustration will continue. Since attorneys have limited time to offer, a coordinated recruiting plan can identify areas of greatest need in particular fields of law, and can then focus on seeking help for matters within attorney's areas of competence. Competence should also be developed among attorneys who do not normally practice in areas in which low income people routinely have legal needs. Recruitment goals should support the local plans so that the plans achieve success. Currently, the Bar Foundation provides some coordination for statewide pro bono efforts, and the coordinator of that program reports that support and recruitment really go hand in hand. At the same time, the recruiting effort should be coordinated with legal service providers so that legal service providers are prepared to assign cases and projects to new recruits. Expanding this system will require additional staff support.

# 9

## Expanding Participation: *Establish an On-line Pro Bono Clearing House*

### **STEP NINE OF THE TEN STEP PLAN:**

**The Commission will assist in establishing an internet-based pro bono case recruitment program via website or email.**

### **Implementation of Step Nine:**

The Commission will coordinate efforts among the Bar Foundation, district committees and service providers to establish a website that will offer attorneys a variety of pro bono cases, and provide a means for scanning and transmitting client documents, pleadings and negotiation tools.

### **PROBLEM ADDRESSED BY STEP NINE:**

New Mexico currently has a fractured system of coordinating pro bono efforts. With the addition of district court programs, the challenge will increase. The Bar Foundation currently operates a "blast fax" program to participating attorneys. The Bar sends a brief case description by fax to a list of attorneys in a geographical region or by substantive law area. If an attorney is interested in more information about the case and will consider assisting the client pro bono, the attorney then contacts the Bar Foundation for more information and to make client contact arrangements. Legal service programs send cases to the Bar Foundation to request pro bono recruitment. This system requires updating and expanding.

### **RATIONALE FOR STEP NINE:**

The Commission will determine the most appropriate location for launching an internet based pro bono case recruitment effort via e-mail or website. This type of system is particularly amenable to unbundled services. Client documents can be scanned and e-mailed to a participating attorney anywhere in the state. Likewise, such a system will permit an attorney to prepare client pleadings and instruct clients to proceed pro se. Also, pro bono attorneys may negotiate with client creditors, landlords and others to assist clients in resolving problems outside the court system. This type of service, if promoted widely, can provide limited legal assistance to a large

number of clients all over the state – particularly to rural areas. One state set up a program with the legal aid provider to allow legal aid staff to act as interpreters for attorneys assisting pro bono clients who spoke languages other than English – a three way call system can accomplish this goal.

## 10

**Expanding  
Participation:**  
*Law Student,  
New  
Lawyer and  
Law Firm  
Challenge*

**STEP TEN OF THE TEN STEP PLAN:**

**The Commission will promote recruitment of law students, new lawyers, and law firms to provide pro bono services.**

**Implementation of Step Ten:**

- a. The Commission will request the UNM School of Law, in conjunction with the New Mexico Bar's Legal Services and Programs Committee and others, to offer targeted pro bono projects for law students.
- b. A mentor program will be developed.
- c. A pro bono "fair" will ultimately be offered in conjunction with the new admittee swearing in ceremony.
- d. The Commission will develop a law firm challenge to encourage pro bono service by firm members.

**PROBLEM ADDRESSED BY STEP TEN:**

Law students and new lawyers are a ripe source of potential pro bono volunteer service. However, since New Mexico has only one law school, our student and new lawyer population is somewhat limited. Additional steps can be developed to expand student, new lawyer and law firm participation in pro bono work.

**RATIONALE FOR STEP TEN:**

The Commission, with the support of the Bar Foundation, will encourage initiatives that instill in new attorneys an awareness of the legal needs of those with limited means and will encourage a sense of public service.

The American Bar Association has an extensive report on law school pro bono programs. Some schools include pro bono service as a graduation requirement, some schools have school-sponsored programs, and others support independent student projects. The ABA provides models of law school pro bono programs.

The Commission will request the University of New Mexico School of Law in conjunction with the LSAP and others, to develop targeted pro bono projects for law students and new lawyers, develop a mentor program and organize a pro bono "fair" in conjunction with the swearing in ceremony. Thus far discussion

of law student involvement has included providing law student assistance to attorneys accepting pro bono matters and providing discrete legal issues for students to prepare and present at court under the direction of a supervising attorney, such as Landlord / Tenant issues. In addition, those participating in the Taos pro bono project have suggested the recruitment of UNM law students to help with local pro bono committee plans and to assist in the implementation of those plans.

Local law students, new attorneys and law firms are under-tapped resources for pro bono assistance from whom participation should be sought.

### CONCLUSION

This Plan comes from the combined efforts of the State Bar of New Mexico Legal Services and Program Committee, the persons named on the cover page and the Systems Planning Working Group of the New Mexico Commission on Access to Justice. The proposals contained in this Plan have been approved by the Board of Bar Commissioners of the State Bar of New Mexico. The System Planning Working Group urges the New Mexico Commission on Access to Justice Commission to approve this Plan with the view towards presenting it to the New Mexico Supreme Court for adoption.

Respectfully submitted:  
The System Planning Committee,

by Christine Chandler  
Christine Chandler, Chair

### ATTACHMENTS

- Attachment A: New Mexico Poverty Statistics
- Attachment B: Proposed Rule 16-601 NMRA
- Attachment C: Proposed Rule 18-201 NMRA

State	Population	Poverty Level Population (at or below 125% individuals)	Poverty Level Population (at or below 125% Households)	Average Number of Legal Problems per Household in Last 12 Months <sup>a</sup>	Estimated Total Problems Each Year	As Applied to New Mexico's Poverty Statistics: Estimated Total Problems Each Year <sup>b</sup>	Legal Help Sought	Legal Assistance Obtained (of those seeking help)	Total Unmet Legal Needs <sup>c</sup>	As Applied to New Mexico's Poverty Statistics: Estimated Unmet Legal Needs <sup>d</sup>
New Mexico	1,819,046	437,747	166,444	2.41		450,016				324,520
Connecticut	3,425,074	270,581	107,000	2.7	288,900	449,399	10.0%		260,010	404,459
Illinois <sup>1</sup>	12,419,293	2,152,488	818,436	1.7	1,391,341	353,161		16.4%	1,163,181	295,243
Massachusetts	6,349,097	943,892	375,973	2.4	902,335	498,614			591,030	326,592
Montana	902,195	174,900	71,388	3.47	247,716	577,961		16.4%	207,091	482,841
New Jersey <sup>3</sup>	8,414,350	1,245,000	464,552	1.8	836,194	504,884	31.2%		575,301	347,360
Oregon <sup>4</sup>	2,842,321	483,194	102,866	1.9	195,046	281,559		17.8%	160,328	231,442
Tennessee	5,689,293	1,001,908	403,995	3.3	1,333,184	549,265	75.3% <sup>9</sup>		320,630	134,570
Vermont <sup>5</sup>	608,827	78,143	32,026	1.1	35,229	286,431	25.0%		26,386	214,823
Washington <sup>6</sup>	5,897,121	1,039,000	350,000	3.3	1,155,000	549,285		12.0%	1,016,400	483,353

<sup>a</sup>For New Mexico, this value is equal to the average of all nine legal needs studies

<sup>1</sup>Illinois sampled individuals at or below 150% of the poverty level for its study. New Mexico's number of poverty households was adjusted for calculations with this State

<sup>2</sup>Massachusetts sampled individuals between 125% and 185% of the poverty level. New Mexico's number of poverty households was adjusted for calculations with this State

<sup>3</sup>New Jersey sampled individuals at or below 200% of the poverty level. New Mexico's number of poverty households was adjusted for calculations with this State

<sup>4</sup>Oregon used 1990 Census numbers (individuals at or below 200% of the poverty level). New Mexico's number of poverty households was adjusted for calculations with this State. Oregon did not rely on Census numbers to calculate households, but the 1998 Oregon Population Survey, since such numbers were not available for New Mexico, households were calculated based on 1990 survey sampled individuals at or below 187.5% of the poverty level, because this figure was not available for New Mexico, the poverty level population for households at or below 185% was used instead in calculations with this State

<sup>5</sup>The Washington Legal Needs Study calculated the number of individuals at or below 125% by using the 2000 Census figure of 815,000, plus 223,000 (the number of individuals not included in the Census because their population group was excluded - undocumented farmworkers, individuals incarcerated or institutionalized, etc.), because this figure was not available for New Mexico, the poverty level population for households at or below 125% was used in calculations with this State

**<sup>6</sup>DIFFERENT MEASURES OF LEGAL ASSISTANCE OBTAINED:**

-Illinois, Montana, New Jersey, Oregon, Vermont and Washington's values are based on the percentage of individuals who did not receive legal assistance (regardless of whether they sought it or not)

-Connecticut's value is based on the percentage of those who did not seek help to solve their problem

-Massachusetts and Tennessee's values are based on the percentage of those who did not take action of any kind

Attachments:

16-601. Pro bono public service:

1. A lawyer should aspire to render at least fifty (50) hours of pro bono publico legal services per year. In fulfilling this aspiration, the lawyer may:
  - A. provide a substantial majority of the fifty (50) hours of legal services without fee or expectation of fee to:
    - (1) persons of limited means; or
    - (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and
  - B. provide any additional services through:
    - (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of the standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
    - (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
    - (3) participation in activities for improving the law, the legal system or the legal profession; or
  - C. alternatively, fulfill this aspiration by contributing financial support to organizations that provide legal services to persons of limited means, in the amount of five hundred dollars (\$500) per year, or provide a combination of pro bono hours and a financial contribution as suggested in this table:

Pro bono Hours	0	5	10	15	20	25	30	35	40	45	50+
Suggested Contribution	\$500	\$450	\$400	\$350	\$300	\$250	\$200	\$150	\$100	\$50	Attorney discretion

2. Members of the judiciary and their staff are exempt from the provisions of this rule. Nevertheless, exempt attorneys are encouraged to assist in meeting the needs of the poor for legal services to the extent that they can, whether by monetary contributions or otherwise. Attorneys licensed in New Mexico who reside outside of New Mexico may fulfill the aspirational goals of this rule in their own state.
3. Each member of the bar shall annually certify whether the member has satisfied the member's

professional responsibility to provide pro bono legal services to the poor. Each member shall certify this information through a form that is made a part of the member's annual membership fees statement which shall require the member to report the following information:

- the number of hours the attorney dedicated to pro bono legal services, and
- if the attorney has satisfied the obligation by contribution, the amount of that contribution.

If the attorney has not provided pro bono legal services to the poor in the current year, the form shall so state, and the reason for non-compliance shall be stated. If the attorney is exempt from the obligation to provide pro bono services to the poor, the report shall so state and indicate the nature of the exemption.

4. The provisions of Rule 16-601 are aspirational goals and an affirmation of professional responsibility, but are not mandatory and do not constitute a basis for discipline under the Rules Governing Discipline for the State Bar of New Mexico. However, the reporting requirements of Rule 16-601 are mandatory and the failure to report this information shall be treated in the same manner as failure to pay dues or comply with mandatory continuing legal education. The information provided pursuant to this Rule is designed for statistical purposes only and shall be used by the State Bar of New Mexico and distributed only in statistical form. Individual attorney responses shall remain confidential.

5. To facilitate the goals of this rule, the chief judge in each judicial district shall be charged with convening a local pro bono committee comprised of local attorneys, judges, legal service providers, and other interested participants. Each local pro bono committee shall establish a local pro bono plan. The time deadlines and content for local pro bono plans shall be established by administrative order of the Supreme Court.

**18-201. Minimum educational requirements:**

A. **Hours required.** Every active licensed member of the state bar shall complete twelve (12) hours of continuing legal education during each year as provided by these rules.

B. **Legal ethics.** At least one (1) hour of the twelve (12) hours shall be devoted to legal ethics or code of professional responsibility subjects.

C. **Professionalism credits.** At least one (1) hour of the twelve (12) hours of continuing education shall be devoted to the subject of professionalism. During the 2001 compliance year, every active member of the State Bar of New Mexico shall be required to take a standardized two-hour course on professionalism to be developed and provided by the State Bar of New Mexico. Course credit can be obtained by attending the live course or viewing a self-study standardized course. After the 2001 compliance year, additional course providers may provide a professionalism course of approved content.

D. **Credit for pro bono legal services.** Continuing legal education credit may be earned for performing eligible pro bono legal services for clients unable to afford counsel. Eligible pro bono legal services are legal services provided by an attorney without compensation pursuant to assignment by a court or participation in a pro bono program administered by an approved legal services organization, state bar committee or court program whose primary purpose is the furnishing of legal services to indigent persons who have been screened for financial eligibility. Credit for pro bono legal services shall be awarded in the following ratio: one (1) CLE credit hour for every five (5) 60-minute hours (300 minutes) of eligible pro bono legal service. Credit shall be awarded in increments of no less than 1 CLE credit hour. Ethics and professionalism credit is not available for participation in pro bono CLE activities. A maximum of four (4) pro bono CLE credit hours may be earned during any one reporting cycle.

1. The MCLE Board shall promulgate regulations outlining the record keeping and reporting procedures to be used for claiming MCLE credit earned by performing pro bono legal services.

E. **Carry-over.** Any member may carry up to twelve (12) hours of credits earned in one (1) compliance year over to the next compliance year only. One (1) ethics credit may be carried-over as part of the twelve (12) hours of credits. One (1) professionalism credit may be carried over as part of the twelve (12) hours of credits. While excess ethics credits can be converted to be used toward the substantive (general) requirement, excess professionalism credits cannot be converted. Self study credit hours cannot be carried over.

F. **Judges.** Judges, retired judges who are active licensed members of the state bar, domestic violence special commissioners and domestic relations hearing officers shall be required to complete the same number of hours of continuing legal education as other active licensed bar members but may satisfy such requirement by attending judicial education programs:

- (1) provided by the Judicial Continuing Education Committee;
- (2) approved by the Minimum Continuing Legal Education Board;
- (3) provided by the Judicial Education Center; or

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- (1) provided by the Judicial Continuing Education Committee;
- (2) approved by the Minimum Continuing Legal Education Board;
- (3) provided by the Judicial Education Center; or

**FREE PROCESS RULE FOR CIVIL CASES.**

**A. Eligibility.** In any civil matter, if the court finds that a party is indigent or otherwise unable to pay a fee or fees payable to the court or the cost of service of process, the court shall waive such fee or fees and the cost of service of process shall be paid by the state.

(1) An applicant is presumed indigent if the applicant is homeless or the current recipient of aid from a state or federally administered public assistance program such as Temporary Assistance for Needy Families (TANF), General Assistance (GA), Supplemental Security Income (SSI), Social Security Disability Income (SSDI), Disability Security Income (DSI), Department of Health, Case Management Service (DHMS), Food Stamps, Medicaid, or public assisted housing.

(2) An applicant who is not presumptively indigent can nevertheless establish indigency by showing in the application that the applicant's available funds do not exceed one hundred fifty percent (150%) of the current federal poverty guidelines established by the United States Department of Labor.

(3) Even if an applicant cannot establish indigency, the court may still grant full or partial free process if, in the court's discretion, the court finds that the applicant is unable to pay fees or costs for other reasons.

**B. Procedure.**

(1) A party seeking free process shall file with the court clerk an application for free process with an attached affidavit of indigency and a proposed order for free process. The motion, affidavit and proposed order shall be in the form set forth in Forms 4- NMRA. The court may decide an application for free process ex parte and without hearing. If an application for free process is denied, the court clerk shall, upon the request of the applicant, schedule a hearing on the application.

(2) Where a party is represented by a legal aid society or a legal services or other nonprofit organization, which has as its primary purpose the furnishing of legal services to indigent persons, or by private counsel working on behalf of or under the auspices of such society or organization, all fees and costs relating to filing the action and service of process shall be waived without the necessity of an application.

(3) Upon the award of any judgment to a party allowed free process, the court may order the party to pay court fees and costs. If a pro se party becomes represented subsequent to being allowed free process, the party shall submit another application for free process along with an affidavit and proposed order. If a case is closed and reinstatement or reopening sought, the party shall submit another motion, affidavit and proposed order.

(4) An attorney representing a party allowed free process must also file an affidavit stating that no fee has been received, and promising that in case any fee is paid for legal services, the attorney shall first deduct court fees and service of process costs and pay them to the court administrator. The affidavit should further provide that the attorney is satisfied as to the truth of the matters contained in the client's affidavit of indigency.

(5) If at any time the court discovers that information in an application for free process was false, misleading, inaccurate, or incomplete at the time the application was submitted, the court may require the applicant or other appropriate party to pay for any costs or fees that were

**ACCESS TO JUSTICE COMMISSION  
LEGISLATION/RULES WORKING GROUP**

**DRAFT  
3-10-06**

waived under an order of free process that was improvidently granted.

**DRAFT**

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ COURT

No. \_\_\_\_\_

\_\_\_\_\_  
Petitioner,

v.

\_\_\_\_\_  
Respondent.

**APPLICATION FOR FREE PROCESS AND AFFIDAVIT OF INDIGENCY**

I request that the court enter an order permitting me to file this case without prepayment of fees and costs and give upon my oath or affirmation the following statement.

My marital status is: Single \_\_\_\_\_ Married \_\_\_\_\_ Divorced \_\_\_\_\_ Separated \_\_\_\_\_ Widowed \_\_\_\_\_

**INFORMATION ABOUT MY FINANCES (check all that apply to you and fill in the blanks):**

DRAFT

**A. PUBLIC ASSISTANCE**

\_\_\_ I do not receive public assistance.

\_\_\_ I currently receive the following public assistance in \_\_\_\_\_ County (please fill in the monthly amount you receive from any of the following public assistance programs):

Temporary Assistance for Needy Families (TANF) \$ \_\_\_\_\_

Food Stamps \$ \_\_\_\_\_

Medicaid \$ \_\_\_\_\_

General Assistance (GA) \$ \_\_\_\_\_

Supplemental Security Income (SSI) \$ \_\_\_\_\_

Social Security Disability Income (SSDI) \$ \_\_\_\_\_

Public Housing \$ \_\_\_\_\_

Disability Security Income (DSI) \$ \_\_\_\_\_

Department of Health Case Management Services (DHMS) \$ \_\_\_\_\_

Other \$ \_\_\_\_\_.

\_\_\_ I am homeless and have no income.

**B. EMPLOYMENT**

\_\_\_ I am currently unemployed and have been unemployed for \_\_\_ months in the past year. I am unemployed because \_\_\_\_\_.  
\_\_\_ I receive unemployment benefits in the amount of \$ \_\_\_\_\_ per month.

\_\_\_ I am employed.  
My employer's name, address and phone number is:  
\_\_\_\_\_  
\_\_\_\_\_

I am paid weekly \_\_\_ every other week \_\_\_ twice a month \_\_\_ once a month \_\_\_\_.  
When I am paid my net take-home pay minus deductions required by law like state and federal tax withholding and FICA is \$ \_\_\_\_\_.

\_\_\_ I am self-employed.  
My type of self-employment is \_\_\_\_\_.  
My average monthly income from self-employment is \_\_\_\_\_.

\_\_\_ My spouse is unemployed and has been unemployed for \_\_\_ months in the past year because \_\_\_\_\_.  
\_\_\_ My spouse receives unemployment benefits in the amount of \$ \_\_\_\_\_ per month.

\_\_\_ My spouse is employed.  
My spouse's employer's name, address and phone number is:  
\_\_\_\_\_  
\_\_\_\_\_

My spouse is paid weekly \_\_\_ every other week \_\_\_ twice a month \_\_\_ once a month \_\_\_\_.  
When my spouse is paid his or her net take home pay minus deductions required by law like state and federal tax withholding and FICA is \$ \_\_\_\_\_.

\_\_\_ My spouse is self-employed.  
My spouse's type of self-employment is \_\_\_\_\_.  
My spouse's average monthly income from self-employment is \_\_\_\_\_.

C. OTHER SOURCES OF INCOME

\_\_\_ I have income from another source not mentioned above.

\_\_\_ Child Support \$ \_\_\_\_\_

\_\_\_ Alimony \$ \_\_\_\_\_

\_\_\_ Investments \$ \_\_\_\_\_

\_\_\_ Other \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_ Other \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_ I do not have any other sources of income.

\_\_\_ My spouse has income from another source not mentioned above.

\_\_\_ Child Support \$ \_\_\_\_\_

\_\_\_ Alimony \$ \_\_\_\_\_

\_\_\_ Investments \$ \_\_\_\_\_

\_\_\_ Other \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_ Other \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_ My spouse does not have any other sources of income.

D. OTHER ASSETS (Please list other assets owned by you or your spouse that can be turned into cash. Do not include money you have in retirement accounts):

Cash on hand \$ \_\_\_\_\_

Bank accounts \$ \_\_\_\_\_

Stocks/bonds \$ \_\_\_\_\_

Income tax refund \$ \_\_\_\_\_

Equity in real property \$ \_\_\_\_\_

Equity in motor vehicles \$ \_\_\_\_\_

Other assets (describe below):

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

IF YOU DO NOT HAVE ACCESS TO YOUR OWN OR YOUR SPOUSE'S INCOME OR ASSETS, EXPLAIN WHY.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

E. MONTHLY EXPENSES

House Payment/Rent	\$ _____
Utilities	\$ _____
Telephone	\$ _____
Groceries (after food stamps)	\$ _____
Car Payment(s)	\$ _____
Gasoline	\$ _____
Insurance	\$ _____
Child Care	\$ _____
Student and Consumer Loans	\$ _____
Court-ordered family support obligations	\$ _____
Other _____	\$ _____
Other _____	\$ _____

F. HOUSEHOLD

I live at \_\_\_\_\_,

and the head of the household is \_\_\_\_\_.

Other than myself, the other members of the household are:

DRAFT

<u>Name</u>	<u>Age</u>	<u>Employment</u>	<u>I Support</u>
_____	_____	_____	( )
_____	_____	_____	( )
_____	_____	_____	( )
_____	_____	_____	( )
_____	_____	_____	( )
_____	_____	_____	( )
_____	_____	_____	( )

*This statement is made under oath. I hereby state that the above information regarding my financial condition is correct to the best of my knowledge. I hereby authorize the Court to obtain information from financial institutions, employers, relatives, the federal internal revenue service and other state agencies. If at any time the Court discovers that information in this application for free process was false, misleading, inaccurate, or incomplete at the time the application was submitted, the Court may require me to pay for any costs or fees that were waived under an order of free process that was granted based on the information in this application.*

**DRAFT**  
\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print Name)  
\_\_\_\_\_  
Petitioner Respondent  
(Pro Se)  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_  
\_\_\_\_\_  
(Telephone)

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss

ACCESS TO JUSTICE COMMISSION  
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DRAFT  
3-10-06

Signed and sworn to (or affirmed) before me on \_\_\_\_\_ (date)  
by \_\_\_\_\_ (name of applicant).

\_\_\_\_\_  
Notary  
My commission expires: \_\_\_\_\_

DRAFT

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ COURT

No. \_\_\_\_\_

\_\_\_\_\_  
Petitioner,

v.

\_\_\_\_\_  
Respondent.

**ORDER ON APPLICATION FOR FREE PROCESS**

THIS MATTER having come before the court on Petitioner's application for free process and affidavit of indigency, and the court being otherwise advised in the premises,

FINDS that:

**DRAFT**

- the applicant receives public assistance or is homeless and is, therefore, presumptively indigent for purposes of free process.
- the applicant's available funds (total annual income plus total assets) do not exceed one hundred and fifty percent (150%) of the federal poverty guidelines, and the applicant is, therefore, indigent for purposes of free process.
- the applicant's available funds (total annual income plus total assets) exceed one hundred and fifty percent (150%) of federal poverty guidelines.

THE COURT ORDERS that:

- the filing fee is waived.
- the filing fee is waived except for the \$ \_\_\_\_\_ alternative dispute resolution (ADR) fee.

ACCESS TO JUSTICE COMMISSION  
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DRAFT  
3-10-06

- the applicant is granted free service of process by the Sheriff in \_\_\_\_\_ County, New Mexico for 1 2 3 4 5 or \_\_\_\_\_ summons(es).
- the applicant is to pay the filing fee on \_\_\_\_\_, 20\_\_\_\_\_.
- interpretation services shall be provided to the applicant.
- free process is denied.
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Unless specifically granted above, this order of free process does not include the following costs: jury fees, certification fees, subpoena fees for witnesses, witness fees for hearings or trials, mailings, long distance charges, transcripts for appeals or record proper, duplication fees for audiotapes or compact discs, copy charges, publication fees, or facsimile services. Application for all other costs are to be made to the judge assigned to your case. If the applicant prevails in this law suit and collects money by judgment or settlement, the court is to be reimbursed for any waived costs. *This order is subject to revision, modification or rescission by the judge assigned to your case.*

\_\_\_\_\_  
DISTRICT COURT JUDGE