

West Virginia
Access to Justice
Commission

**2014-2016
Strategic
Plan**

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I. STRATEGIC PLAN: INTRODUCTION, PURPOSE, AND DESIGN

This 2014-2016 Strategic Plan (“Strategic Plan”) of the West Virginia Access to Justice Commission (“Commission”) is the first official strategic plan of the Commission and represents a culmination of several years of hard work and effort of a number of leaders and volunteers in the legal community, including members of the judiciary, attorneys, directors, staff, and the general public. Without the efforts of these individuals since the inception of the Commission, this Strategic Plan would not have been possible.

The purpose of this Strategic Plan, as directed by the Administrative Order of the West Virginia Supreme Court of Appeals (“Court”) that established the Commission, entered on January 29, 2009, and the Administrative Order of the Court that continued the Commission, entered on December 17, 2013, is to set forth a roadmap which the Commission can use in its mission to support and ensure a statewide, integrated, non-duplicative legal services delivery system, responsive to the access to justice needs of West Virginia citizens identified by the Commission. (See Attachment 1, Administrative Order (2009), and Attachment 2, Administrative Order (2013).)

This Strategic Plan is designed to set forth the direction of the Commission over a three year period from calendar years 2014 through 2016 and to be the framework the Commission uses at each of its meetings during that time period in formulating its agenda, assessing issues and projects, making decisions, and obtaining and utilizing resources. This Strategic Plan is also designed to be a living document that, while guiding the direction of the Commission, does not unnecessarily restrict the decision-making ability of the Commission as its work progresses and as new opportunities and unforeseen issues arise. Therefore, the Commission reserves the right to revise this Strategic Plan at any time, as it deems appropriate, by majority vote of the Commission.

It is the Commission’s intent that this Strategic Plan also be carefully reviewed annually, at the beginning of 2015 and 2016; that the activities of the Commission from the previous year be assessed against the objectives of this Strategic Plan; and that the Commission devise a strategy for accomplishing the objectives of the Strategic Plan for the remainder of the Strategic Plan’s term.

In addition to the foregoing, it is the Commission’s intent to begin development of a 2017-2019 Strategic Plan at the beginning of the 2016 calendar year. The Chairperson of the Commission must assemble an ad hoc Strategic Plan Committee to begin assessment of the 2014-2016 Strategic Plan and development of the 2017-2019 Strategic Plan for implementation of the new plan at the start of the 2017 calendar year. This process will ensure adequate analysis and assessment of the Commission’s work and progress and will provide continuity of direction for the Commission’s goals.

This Strategic Plan sets forth a summary of the Commission from its inception to present, an overview of the eight directives set forth in the 2009 Administrative Order establishing the Commission, a summary of the accomplishments of the Commission under each directive, and a

presentation and discussion of the six objectives the Commission seeks to accomplish during the term of this Strategic Plan.

II. SUMMARY OF THE WEST VIRGINIA ACCESS TO JUSTICE COMMISSION

The establishment of the Supreme Court of Appeals of West Virginia's Access to Justice Commission arose out of the recognition of the needs of West Virginians to access the civil justice system. In December 2008, Justice Brent D. Benjamin, working with a group comprised of staff from the Court's Administrative Office and Directors of Legal Aid of West Virginia, proposed the empanelment of a permanent, statewide Access to Justice Commission as a mutual interest of the Court, the West Virginia State Bar, and the people of the State of West Virginia.

The Court was first presented with a recommendation for creating a statewide Access to Justice Commission in 2004.¹ The original recommendation listed a number of examples of how average West Virginians face barriers to accessing justice. Further, the recommendation referred to the *Final Report of the Commission on the Future of the West Virginia Judiciary* that reported a decrease in necessary federal funding coupled with an "enormous need" for civil legal representation for those with limited incomes. This federal funding erosion took place despite IOLTA supplementation and Pro Bono Referral Program expansion.

The recommendation was that a statewide Access to Justice Commission should address the fact that the "cost of effective legal representation is beyond the moderate means of the ordinary citizen."² In the years between the issuance of the *Final Report of the Commission on the Future of the West Virginia Judiciary* and the original recommendation to the Court, the West Virginia State Bar's Blue Ribbon Symposium on the Legal Services for the Poor ("Symposium") made some improvements to West Virginia's federally-funded legal services programs.³ The Symposium combined the uncoordinated and separate programs into one statewide Legal Aid program while promoting a technology review, funding option explorations, private bar involvement, intake procedures, and other systems used by the newly combined program.⁴

Following the inception of the Symposium, the Court attempted to address specific barriers to justice through initiatives such as those completed by the Task Force on Self-Represented Litigants, the Task Force to Study Perceived Racial Disparity in the Juvenile Justice System, the Committee on Equality in the West Virginia Judiciary (formerly the Task Force on Gender Fairness), and the Committee on Mental Hygiene Reform. Through these initiatives, the Court recognized the necessity for improving access to justice in these areas.

Justice Benjamin observed the progress made by other states' efforts toward reducing and eliminating barriers to justice and, in December 2008, proposed a statewide Access to Justice

¹ Berger, Irene C., and P. Nathan Bowles, Jr., Esq., *Recommendation to Create a WV Access to Justice Commission* (Feb. 5, 2004).

² *Id.* at 1.

³ *Id.* at 2.

⁴ *Id.*

Commission to coordinate efforts begun by the task forces and committees. The Commission would be empowered to effectuate long-term, positive systemic change. The Commission would identify barriers experienced by West Virginians in accessing the civil justice system; devise a strategic plan responsive to the identified needs; promote the understanding of equal justice; involve attorneys and the judiciary; enhance the understanding of the legal system; communicate information about justice issues; and address existing laws, rules, and regulations that may adversely affect access to justice.

The Commission was approved by the Court on December 9, 2008, following the recommendation of Justice Benjamin. The Court approved empanelment of a nine-member statewide Access to Justice Commission. Four members were nominated by the Court; three by the West Virginia State Bar, including by rule the President of the State Bar; one by the Dean of the West Virginia University College of Law; and one by the Governor. All were appointed by the Chief Justice and approved by the Court. Several *ex officio* members were recommended as follows: Directors of Legal Aid of West Virginia, Director of West Virginia Fund for Law in the Public Interest, Director of West Virginia Senior Legal Aid, Director of the West Virginia University College of Law Continuing Legal Education, one student representative from the Clinical Law Program at the West Virginia University College of Law, and the Administrative Director of the Courts. The West Virginia Access to Justice Commission was established by Administrative Order on January 29, 2009. Commissioners were appointed in 2009.

The inaugural meeting of the Commission took place on October 30, 2009. Subsequent meetings were held over the course of 2010 and continue through the present. A director was appointed for the Commission on March 1, 2011.

The Commission was continued by Administrative Order on December 17, 2013. The 2013 Administrative Order supports the work of the Commission, designates the Commission's name as the West Virginia Access to Justice Commission, expands the scope of the Commission's directives, and requires the Commission to submit a written synopsis of its activities in furtherance of its Strategic Plan annually to the Court for inclusion in the Court's annual report.

III. ADMINISTRATIVE ORDER ESTABLISHING THE WEST VIRGINIA ACCESS TO JUSTICE COMMISSION

The Administrative Order establishing the West Virginia Access to Justice Commission, entered on January 29, 2009, directed the Commission to do the following:

1. Examine, identify, and analyze various barriers West Virginians face when using our legal system;
2. Devise, coordinate, and oversee a strategic plan for a statewide, integrated, non-duplicative legal services delivery system, responsive to the identified needs;
3. Promote understanding of the importance of equal justice and of the problems many West Virginians face in accessing our civil justice system;

4. Secure involvement and commitment on the part of attorneys and the judiciary toward expanding access to justice, and help develop the capacities of future leaders of access to justice efforts in our state;
5. Enhance West Virginians' understanding of our legal system, and of their fundamental legal rights and responsibilities through providing public legal education, and addressing and improving the public perception and public trust and confidence in the court system;
6. Provide a mechanism for serving as a clearinghouse for communication and information dissemination about justice issues in West Virginia;
7. Assist in the procurement of stable funding and other resources to support access to justice, and work to maximize wise and efficient use of available resources; and
8. Address existing and proposed laws, rules, and regulations that may adversely affect access to justice [issues in] West Virginia (short and long term).

The 2009 Administrative Order also directed the Commission to submit a written synopsis of its activities and any resulting recommendations for Court action to the Supreme Court of Appeals of West Virginia.

IV. ADMINISTRATION, MEMBERSHIP, AND GOVERNANCE

The Commission reports to the Court and is staffed by a Director. The Commission currently consists of sixteen members, of which nine are appointed and seven are *ex officio*. The appointed members' initial terms were drawn by lot: three serving a one-year term, three serving a two-year term, and the remaining three members serving a three-year term. All subsequent appointments are for three-year terms, with members serving no more than three successive three-year terms. The Court fills vacancies by appointment where necessary, and members thus appointed serve for the remainder of the unexpired term. Any member whose term expires continues to serve until his or her successor is appointed.

The appointed members of the Commission receive their appointment by the Chief Justice of the Court and include the following individuals:

1. The Court nominates four members, including at least one Justice of the Court;
2. The West Virginia State Bar nominates for appointment three members including the State Bar president or his or her designee, and two additional attorneys, possessing experience in one or more of the following areas: corporate counsel, in-house, pro bono, and delivery of services to those of low or moderate incomes;
3. The Dean of the West Virginia University College of Law or his or her designee nominates for appointment one faculty representative; and
4. The Governor nominates for appointment one individual, employed in a full-time capacity by a government or non-profit agency dedicated to providing for the needs of low-income West Virginians.

The Chief Justice coordinates appointments to ensure that at all times the Commission reflects the diverse ethnic, economic, gender and geographic communities of West Virginia.

In addition to the appointed members, the following individuals serve as *ex officio* members of the Commission:

1. The Legal Director of Legal Aid of West Virginia,
2. The Executive Director of Legal Aid of West Virginia,
3. The Administrative Director of the Court,
4. The Director of West Virginia Fund for Law in the Public Interest,
5. The Director of West Virginia Senior Legal Aid,
6. The West Virginia University College of Law Continuing Legal Education Director, and
7. One student representative selected annually by the Clinical Law Program at the West Virginia University College of Law.

The Commission elects a Chairperson by majority vote from among the non-*ex officio* members to serve a one-year term. The Commission may elect other officers as necessary, pursuant to its established rules and procedures.

The Commission meets, at a minimum, quarterly on the annum, with special meetings that may be called by the Chairperson of the Commission or upon the request of any three members of the Commission, and provides an annual report of its activities to the Chief Justice of the Court.

V. DIRECTIVES AND ACCOMPLISHMENTS

Since its establishment in 2009, the Commission has been seeking, gathering, and analyzing information on the access to justice barriers facing West Virginians. As more fully described below, the Commission conducted public forums, conducted a pro bono survey, received input from the public on an ongoing basis, researched various issues, and collected and analyzed projects and plans devised in other states, among others. This information collection and processing stage has been essential to the development of the Commission and has established a necessary foundation upon which the Commission can now build. The Commission has now solidified its organization, gathered and analyzed sufficient information on which to act, and has obtained necessary experience to proceed to the next directive of the Administrative Order: development and implementation of this Strategic Plan.

Directive 1. Examine, identify, and analyze various barriers West Virginians face when using our legal system.

Accomplishments:

- a. **Regional Public Forums Completed.** To fulfill the first directive of the Administrative Order and as a means by which to obtain direct information concerning the civil legal needs gap faced by West Virginia citizens, the Commission held six regional forums around the State in the fall of 2011. The forums were held in Beckley, Martinsburg, Huntington, Wheeling, Morgantown, and Charleston. Each forum was facilitated by Justice Brent Benjamin and attended by a majority of Commissioners. In addition to the option of in-person

presentation at the forums, those who could not attend in person were encouraged to submit their concerns in writing or by telephone. The information received by the Commission was extraordinarily thoughtful, well-presented, and sometimes poignant, highlighted the pervasive legal needs gap, and promoted a better understanding of the varied, precise and often complex nature of unmet legal needs and problems in different areas of the State.

- b. Report and Recommendations Finalized and Submitted. As a result of the information gathered at the regional public forums and received via mail, email, and telephone, the Commission submitted a report of its findings to the Court. (See Attachment 3, Report of the Access to Justice Commission to the Supreme Court of Appeals of West Virginia 2013.) Accompanying the report, the Commission also proposed for immediate action the following recommendations:
- i. Support for adequate public and private funding for Legal Aid of West Virginia and other legal services programs that serve low-income and vulnerable clients, ensuring a strong and effective legal aid delivery system, giving all West Virginians meaningful access to justice;
 - ii. Introduce, for legislative consideration, proposed revisions to West Virginia Code § 23-5-16 (fees of attorney for claimant; unlawful charging or receiving of attorney fees) as drafted by the Commission's Workers' Compensation Committee;
 - iii. Remove the West Virginia Lawyer Disciplinary Board's Legal Ethics Opinion 2010-01 prohibiting "ghostwriting";
 - iv. Develop, implement, and educate about "unbundling" of legal services as a means to provide representation to those of low or modest means and update Rule 1.2(c) of the West Virginia Rules of Professional Conduct to coincide with the ABA Model Rules;
 - v. Develop and implement an online self-help center to be utilized by people who represent themselves in Magistrate or Circuit Court without an attorney;
 - vi. Develop a centrally located hotline staffed by an attorney or law students to support the online self-help center and answer questions, but not give legal advice;
 - vii. Develop and implement a strong *pro bono* program working with the West Virginia State Bar, Legal Aid of West Virginia, and West Virginia Senior Legal Aid; and
 - viii. Plan and sponsor a one-day Pro Bono Summit during National Pro Bono Week, October 20-26, 2013.

The official report of the Commission as submitted to the Court, entitled, "Report of the Access to Justice Commission to the Supreme Court of Appeals of West Virginia 2013" (the "Report"), along with the official recommendations of the Commission as submitted to the Court, entitled, "Recommendations of the West Virginia Access to Justice Commission" (the "Recommendations"), are available on the Commission's webpage, at [Page 6 of 24](http://www.courtswv.gov/court-</p></div><div data-bbox=)

administration/access-to-justice/publications.html. (See Attachment 4, Recommendations of the West Virginia Access to Justice Commission.)

- c. Visits to Senior Centers. Chief Justice Brent Benjamin visited senior centers in Mannington, Fairview, Parkersburg, and Ripley during the summer of 2012 to collect information from specific interest groups on access to justice needs affecting seniors.
- d. Pro Bono Survey. In August 2013, the Commission's Pro Bono Committee devised and circulated to the members of the West Virginia State Bar, via email, a pro bono survey. The survey sought to determine the type of pro bono work being performed by West Virginia attorneys, the number of pro bono hours accumulated each year, whether firms have pro bono policies, whether firms support pro bono work by their attorneys, identification of the motivating factors in doing pro bono work, identification of the factors which discourage pro bono work, and identification of what would make attorneys more inclined to do pro bono work. The results of the pro bono survey are being compiled and will be used to further pro bono participation among members of the West Virginia State Bar.
- e. Workers' Compensation Committee. The Commission's Workers' Compensation Committee was formed to study issues related to access to justice in the administration and litigation of workers' compensation claims in West Virginia. The Committee studied a statutory revision providing attorneys' fees in medical treatment claims barred by W. Va. Code § 23-5-16. As it stood, the Code allowed for a recovery of attorneys' fees not to exceed twenty percent of any award granted in a claim. The Committee determined that this particular issue was an access to justice issue for indigent claimants because claimants were unable to find legal representation to protest denials of medical treatment. The Committee determined that indemnity benefits were more difficult to recover after statutory changes in 2003 and 2005, resulting in fewer attorneys to represent low income claimants because attorneys had no financial incentive to represent claimants in medical only cases. The Committee recommended to the Commission a proposed revision of W. Va. Code § 23-5-16 for approval. The revision provided that a lawyer could be compensated with a modest fee of up to \$500 that would be charged against the Claim Administrator if the claimant was successful in obtaining a reversal of a medical denial. Historically, a lawyer had no way of receiving compensation for his or her work on a medical denial issue unless the claim was settled or there was some kind of monetary award. Following review and approval of the proposed revision by the Commission, then-Chairman Bob Baker submitted the proposed revision to the Court for its consideration. The Court approved the revision. The proposed revision was then introduced as House Bill 3069 by the West Virginia House of Delegates during the 2013 Regular Legislative Session. The bill passed with minor changes and was signed by Governor Earl Ray Tomblin on May 1, 2013. It became effective on July 12, 2013.

- f. General Public Input. In addition to the information provided by the public to the Commission at the regional public forums, the Commission continues to receive input about barriers experienced by those navigating the civil justice system. Matters of concern have been brought to the Commission's attention via mail, email, and telephone to the Director and Commissioners.
- g. County Courthouse Accessibility Project. As a result of the issues brought to the Commission's attention at the regional public forums concerning accessibility to court services for those who are physically disabled, summer interns were hired to perform a statewide review of the physical accessibility of all fifty-five county courthouses. The interns worked in groups of two and assessed the accessibility to court services in each county. The pairs examined the location and distance of handicapped parking spaces to handicapped entrances, the availability of ramps for those unable to navigate steps, the directional opening of doors, location of restrooms, ease of mobility in a wheelchair, directional signage to offices, including signs in Braille, accessibility and maneuverability in courtrooms and clerks' offices, among numerous other accessibility issues. A report and comparative chart summarizing the findings of the interns is being compiled for the Commission's review.
- h. Courthouse Accessibility Efforts. The Commission continues to work with the West Virginia Courthouse Facilities Improvement Authority ("Authority") to utilize its evaluation of accessibility and other barriers for the disabled. The Authority performed a year-long evaluation of courthouses in each county. The extent of the evaluation will reach far beyond accessibility for those with physical disabilities. The Authority has agreed to share the results of its evaluation as they relate to accessibility to court services for those with disabilities. The Commission also agreed to share the results of the county courthouse accessibility project conducted by the summer interns with the Authority upon completion of the report.

Directive 2. Devise, coordinate, and oversee a strategic plan for a statewide, integrated, non-duplicative legal services delivery system, responsive to the identified needs.

Accomplishments:

Based on the regional public forums conducted, the pro bono survey, various other input by the public, research of projects and plans devised in other states (based on previous actions/analysis done by the Commission), the Commission believes it now has enough information at its disposal regarding barriers facing West Virginians to develop this Strategic Plan. This Strategic Plan will address barriers experienced and needs exhibited by West Virginians in accessing the civil justice system.

The Commission voted to begin development of a strategic plan and created an ad hoc Strategic Plan Committee to formulate recommendations and draft a strategic plan to present to the Commission. The first meeting of the Committee was held on Thursday, September 19, 2013, at 10:00 a. m. at the West Virginia State Bar office. The Committee

began to develop a three year strategic plan at the meeting using the Court's Administrative Order as its guide. In doing so, the Committee examined each of the directives in the Administrative Order, assessed how the Commission went about fulfilling each directive, and identified the accomplishments of the Commission in carrying out each directive. The Committee then evaluated the next steps for the Commission to take and identified the objectives to be accomplished in the next three years to continue and carry out the Court's directives. The ad hoc Strategic Plan Committee held several additional meetings to discuss, develop, and revise the draft plan to prepare for submission of the final draft plan to the full Commission for discussion and approval at the December 10, 2013, Commission meeting. The Commission approved the Strategic Plan at that meeting and voted to forward the final Strategic Plan to the Court.

Directive 3. Promote understanding of the importance of equal justice and of the problems many West Virginians face in accessing our civil justice system.

Accomplishments:

- a. Regional Public Forums Completed. The Commission invited the public, judges, magistrates, legislators, circuit clerks, others within the court system, members of the Bar, those who work with the disabled or domestic violence victims, and those within the education system to attend the regional public forums to hear directly from those who experienced or witnessed barriers within the civil justice system. The regional public forums were held in Beckley, Martinsburg, Huntington, Wheeling, Morgantown, and Charleston in the fall of 2011. The public forums were well-attended, which provided an excellent opportunity to promote understanding of the importance of equal justice and of the problems West Virginians face in accessing the civil justice system.
- b. Report and Recommendations Finalized and Submitted. As a result of the information gathered at the regional public forums and received via mail, email, and telephone, the Commission finalized and submitted a Report and Recommendations to the Court. The Report categorized and examined the information gathered at the public forums and set forth the problems West Virginians faced in accessing the civil justice system. The Report also served to promote the understanding of the importance of equal justice in West Virginia. The Recommendations were submitted to pinpoint specific access to justice areas that needed to be addressed. The Report and Recommendations are available on the Commission's webpage, at <http://www.courtswv.gov/court-administration/access-to-justice/publications.html>.
- c. Attendance at State Bar Meetings on Behalf of Commission. To promote the understanding of the importance of equal justice, the problems West Virginians face in accessing the civil justice system, and the work of the Commission, Commission Director Deborah Bogan and Chief Justice

Brent Benjamin attended the following meetings around the State on behalf of the Commission:

- i. Director Bogan and Chief Justice Benjamin attended the West Virginia State Bar regional meetings during the fall of 2011 at the invitation of Anita Casey, Executive Director of the West Virginia State Bar. Director Bogan addressed attorneys at the regional meetings about the Commission and presented on the historical background of the Commission, the directives enumerated in the Administrative Order, and the regional public forums being held around the State at that time.
 - ii. Director Bogan attended the Circuit Judges Conference in May 2012. Director Bogan spoke at the conference about the Commission and presented on the historical background of the Commission, the directives enumerated in the Administrative Order, and a summarization of the barriers to the legal system experienced or observed by those who attended the regional public forums.
 - iii. Director Bogan attended the Magistrate Conference in May 2012. Director Bogan addressed the magistrates about the Commission and presented on the historical background of the Commission, the directives enumerated in the Administrative Order, and a summarization of the barriers to the legal system experienced or observed by those who attended the regional public forums.
- d. Appearance on The Law Works. Commission Director Deborah Bogan and Justice Brent Benjamin appeared on “The Law Works” on West Virginia Public Television in the fall of 2011. They discussed the establishment of the Commission and the groundwork being done to examine, identify, and analyze various barriers West Virginians face when using the legal system, which included the public forums which were being conducted around the State at that time. Justice Benjamin talked about the rights of citizens to access a justice system which belongs to them regardless of whether they are represented by an attorney and reported on the initiatives of other commissions around the country. Director Bogan discussed specific barriers which were reported to the Commission at the public forums and the prospect of working with commissions in other states to address the problems faced by those of low and modest means. The appearance of Justice Benjamin and Director Bogan on “The Law Works” also provided an opportunity to inform the public of the existence and purpose of the Commission.

Directive 4. Secure involvement and commitment on the part of attorneys and judiciary toward expanding access to justice, and help develop the capacities of future leaders of access to justice efforts in our State.

Accomplishments:

- a. Development of Committees. The Commission developed the following committees utilizing current Commissioners, previous Commissioners, and individuals outside the Commission:
 - i. Pro Bono Committee. The Pro Bono Committee is comprised of attorneys from Legal Aid of West Virginia, West Virginia Senior Legal Aid, the West Virginia University College of Law, and a law firm pro bono coordinator. The Committee devised and distributed a pro bono survey to members of the West Virginia State Bar in the first step to identify the categories of pro bono work being done and gauge the interest and support of attorneys and law firms in engaging in pro bono work.
 - ii. Disabilities Committee. The Disabilities Committee is working to coordinate varied groups with the common interest of addressing the problems faced by those with physical and mental disabilities when accessing or navigating the civil justice system and developing solutions to assist them.
 - iii. Elder Law Committee. The Elder Law Committee is comprised of a prosecuting attorney and an attorney from West Virginia Senior Legal Aid. This Committee was developed recognizing that West Virginia has the second highest per capita rate of senior citizens in the United States. Many seniors struggle financially to meet basic needs. Seniors may face bewildering and complex legal issues, including fraud and abuse, financial exploitation, Medicare missteps, and end of life decisions, without requisite financial resources. The Elder Law Committee has met to discuss various initiatives, including partnerships with senior centers, recruitment of inactive members of the Bar and senior attorneys to provide pro bono services to senior citizens, and the formation of a West Virginia State Bar Elder Law Committee.

Prior to June 2011, the West Virginia State Bar did not have a practice committee dedicated to elder law. The Commission encouraged the State Bar to form an elder law committee. The Commission believed such a committee could build expertise among its members, mentor law students, produce CLE on elder law issues, examine relevant legislative issues, develop a quality referral network of attorneys who practice in this area, and encourage attorneys to provide pro bono representation to seniors. As a result of its encouragement, the West Virginia State Bar authorized the formation of the West Virginia State Bar Elder Law Committee.

In January 2013, the Elder Law Committee for the Commission and the West Virginia State Bar Elder Law Committee held a joint meeting. The committees received a presentation by a representative of the Neighborhood Legal Services Association (“NLSA”), concerning legal education efforts in Pennsylvania for senior citizens. The “Older & Wiser Program,” which was conceived and implemented in southwestern Pennsylvania in 2003, was discussed. In essence, NLSA attorneys and volunteer attorneys developed brochures, PowerPoint presentations, and other handout materials. Once the first presentation was finished, NLSA representatives and interested parties met with legislators to offer to conduct seminars in their particular communities. An agreement was reached with participating legislators. The legislators would be responsible for obtaining a date, venue, refreshments and issuing invitations and press releases. Volunteer attorneys conducted the seminars and answered general questions. NLSA provided the PowerPoint, brochures, and handouts.

The West Virginia State Bar Elder Law Committee subsequently agreed to work with the Commission’s Elder Law Committee to create a program similar to the Older & Wiser Program. A presentation is tentatively scheduled for April 2014 in the Charlestown/Martinsburg area. Catherine McConnell, Director of Senior Legal Services, will be assisting the volunteer attorney with the formulation of the presentation. A presentation outline will be presented to the Commission for approval.

The Commission’s Elder Law Committee will continue to focus its efforts upon the development of this volunteer program for attorneys.

- iv. Workers’ Compensation Committee. The Workers’ Compensation Committee was formed to study issues related to access to justice in the administration and litigation of workers’ compensation claims in West Virginia. The Committee members include representative attorneys of both the employer and claimant bar, general counsel and a former general counsel from the West Virginia Offices of the Insurance Commissioner, a Board Member of the West Virginia Workers’ Compensation Board of Review, the Chief Administrative Law Judge from the West Virginia Workers’ Compensation Office of Judges, and a clerk from the West Virginia Workers’ Compensation Board of Review. The Committee studied and discussed a variety of topics, including education of claimants in the workers’ compensation claims process and litigation system, access to competent legal representation in the specialized field of workers’ compensation, and access to claim file materials by injured workers and their attorneys.

The Committee narrowed the focus of its discussion to three topics: (1) education and resources available to self-represented litigants, (2) access to claim file materials, and (3) payment of attorneys' fees in medical treatment claims which were barred by W. Va. Code § 23-5-16. The Committee recommended to the Commission a proposed revision to W. Va. Code § 23-5-16. The Commission and then the Court reviewed and approved the proposed revision. The proposed revision was introduced as House Bill 3069 by the West Virginia House of Delegates during the 2013 Regular Legislative Session. The bill passed with minor changes and was signed by Governor Earl Ray Tomblin on May 1, 2013. It became effective on July 12, 2013.

- b. West Virginia Online Legal Assistance Help Center. The Commission and the Pro Bono Committee began the process of analyzing and developing a West Virginia Online Legal Assistance Help Center, mirrored after the OnlineTNJustice.org project. The project is an online question and answer system developed and utilized by the Tennessee State Bar in conjunction with a legal services corporation and is based on a walk-in clinic or dial-a-lawyer model where clients request brief advice and counsel about a specific civil legal issue from a volunteer lawyer. Lawyers provide information and basic legal advice without any expectation of long-term representation. The project system screens clients for eligibility and, if qualified, allows them to post a question to a private messaging system. The questions are answered by private attorneys volunteering their time. The Commission and the Pro Bono Committee are exploring development and implementation of the project in West Virginia and would facilitate a partnership among Legal Aid of West Virginia, the West Virginia Bar Association's Lawyer Information Service, and Lawyer Referral Service Committees for the housing, maintenance, and cost of the project.
- c. Self-Help Centers (Physical and Online). With the number of self-represented litigants already attempting to navigate the civil justice system and the implementation of e-filing around the State which will be utilized by self-represented litigants, the Commission recommended to the Court the development of a physical self-help center to be housed at the law library in Clarksburg, Harrison County, staffed by the current librarian and assigned a toll-free number so that citizens around the State can have their questions answered. In addition, the Commission also recommended to the Court the development of an online self-help center which would provide instructions, forms, answers, and guidelines to those accessing the center. The Commission continues to encourage establishment of the physical and online self-help centers, as they would be a great asset to many West Virginians seeking information about the civil legal system, especially self-represented litigants.

Directive 5. Enhance West Virginians' understanding of our legal system, and of their fundamental legal rights and responsibilities through providing public legal education, and addressing and improving the public perception and public trust and confidence in the court system.

Accomplishments:

- a. West Virginia Access to Justice Commission Webpage. The Commission has a webpage, located at <http://www.courts.wv.gov/court-administration/access-to-justice.html>, which was developed on the Court's website to provide information to the public about the Commission and its projects, initiatives, and other works being done by the Commission. It also provides the general public with a method to contact the Commission by either email or telephone.
- b. Regional Public Forums Completed. The Commission held six regional public forums around the State in the fall of 2011. The forums were held in Beckley, Martinsburg, Huntington, Wheeling, Morgantown, and Charleston. Each forum was facilitated by Justice Brent Benjamin and attended by a majority of Commissioners. In addition to the option of in-person presentation at the forums, those who could not attend in person were encouraged to submit their concerns in writing or by telephone. In addition to the Commission's goal of examining, identifying, and analyzing barriers West Virginians face when using the legal system set forth in Directive 1, the six public forums met the Commission's additional goal of exhibiting to the public the priority the Court places on improving public perception, trust and confidence in the court system, increasing the public's understanding of the legal system by engaging in dialogue and answering questions, and acknowledging the rights of citizens to access the civil justice system whether with counsel or as a self-represented litigant.

Directive 6. Provide a mechanism for serving as a clearinghouse for communication and information dissemination about justice issues in West Virginia.

Accomplishments:

- a. Creation of Director Position. On March 1, 2011, the Court appointed a Director of the Commission to, among other duties, set up mechanisms for the Commission to serve as a clearinghouse for communication and information dissemination about access to justice issues in West Virginia. The Director fields and answers telephone calls, emails, and mail from the public addressing various problems experienced in the civil justice system; researches the many issues addressed by Access to Justice Commissions around the country to determine if and how they may affect West Virginia citizens; works with Access to Justice Commission Directors around the country to develop projects to better provide access to the civil justice system; and works with the Commission's committees to develop

mechanisms within the State to provide information to those who need assistance.

- b. West Virginia Access to Justice Commission Webpage. The Commission's webpage, located on the Court's website at <http://www.courtswv.gov/court-administration/access-to-justice.html>, was developed not only as a means to provide information to the public about projects, initiatives, and other works of the Commission, but also as a means to provide the general public with a method to contact the Commission by either email or telephone.

Directive 7. Assist in the procurement of stable funding and other resources to support access to justice, and work to maximize wise and efficient use of available resources.

Accomplishments:

- a. West Virginia Access to Justice Foundation. The Commission developed the West Virginia Access to Justice Foundation to raise and expend funds to support and further the Commission's directives and Strategic Plan. The Foundation received its 501(c)(3) designation from the IRS in June 2012.
- b. Donation Line on State Bar Dues Form. The Commission has been and will continue to work with the West Virginia State Bar to create an "opt in/out" donation line on the West Virginia State Bar dues form. The funds would be designated for the West Virginia Access to Justice Foundation.

Directive 8. Address existing and proposed laws, rules, and regulations that may adversely affect access to justice in West Virginia (short and long term).

Accomplishments:

Workers' Compensation Legislation Passed. The Commission's Workers' Compensation Committee was formed to study issues related to access to justice in the administration and litigation of workers' compensation claims in West Virginia. The Committee studied a statutory revision providing attorneys' fees in medical treatment claims barred by W. Va. Code § 23-5-16. As it stood, the Code allowed for a recovery of attorneys' fees not to exceed twenty percent of any award granted in a claim. The Committee determined that this particular issue was an access to justice issue for indigent claimants because claimants were unable to find legal representation to protest denials of medical treatment. The Committee determined that indemnity benefits were more difficult to recover after statutory changes in 2003 and 2005, resulting in fewer attorneys to represent low income claimants because attorneys had no financial incentive to represent claimants in medical only cases. The Committee recommended to the Commission a proposed revision of W. Va. Code § 23-5-16 for approval. The revision provided that a lawyer could be compensated with a modest fee of up to \$500 that would be charged against the Claim Administrator if the claimant was

successful in obtaining a reversal of a medical denial. Historically, a lawyer had no way of receiving compensation for his or her work on a medical denial issue unless the claim was settled or there was some kind of monetary award. Following review and approval of the proposed revision by the Commission, then-Chairman Bob Baker submitted the proposed revision to the Court for its consideration. The Court approved the revision. The proposed revision was then introduced as House Bill 3069 by the West Virginia House of Delegates during the 2013 Regular Legislative Session. The bill passed with minor changes and was signed by Governor Earl Ray Tomblin on May 1, 2013. It became effective on July 12, 2013.

VI. ADMINISTRATIVE ORDER CONTINUING THE WEST VIRGINIA ACCESS TO JUSTICE COMMISSION

The Commission was continued by Administrative Order on December 17, 2013. The 2013 Administrative Order supports the work of the Commission, designates the Commission's name as the West Virginia Access to Justice Commission, and directs the Commission to do the following:

1. Examine, identify, and analyze various barriers West Virginians face when using the legal system;
2. Devise, coordinate, and oversee a strategic plan for a statewide, integrated, non-duplicative legal services delivery system, responsive to the identified needs;
3. Promote understanding of the importance of equal justice and of the problems many West Virginians face in accessing our civil justice system;
4. Secure involvement and commitment on the part of attorneys, the judiciary, magistrates, law enforcement, clerks, legislators, executive officers and the general public toward expanding access to justice, and help develop the capacities of future leaders of access to justice efforts in our state;
5. Enhance West Virginians' understanding of the legal system, and of their fundamental legal rights and responsibilities through providing public legal education, and addressing and improving the public perception, trust, and confidence in the court system;
6. Provide a mechanism for serving as a clearinghouse for communication and information dissemination about justice issues in West Virginia;
7. Assist in the procurement of stable funding and other resources to support access to justice, and work to maximize wise and efficient use of available resources; and
8. Address existing and proposed laws, rules, and regulations that may adversely affect access to justice in West Virginia in both the short and long term.

The 2013 Administrative Order also directs the Commission to submit a written synopsis of its activities in furtherance of its Strategic Plan annually to the Court for inclusion in the Court's annual report.

VII. OBJECTIVES FOR 2014-2016

Since its inception, the Commission and its committees have been seeking, compiling, and analyzing information about access to justice issues and needs in West Virginia. After completing its analysis of the information received to date, the Commission reviewed the directives contained in the Administrative Order establishing the Commission, its Report and Recommendations, recommendations from various Commissioners, the strategic plans of other states' Access to Justice Commissions, and recommendations arising from the Commission's ad hoc Strategic Plan Committee, the Commission selected six main objectives for this Strategic Plan for calendar years 2014-2016. These objectives were selected because the Commission believed that they would provide the greatest benefit to the largest number of West Virginians seeking access to or experiencing barriers in accessing the civil legal system. These objectives also comply with and advance the specific directives placed on the Commission by the 2013 Administrative Order of the Court.

1. Self-Help Centers

a. Physical Self-Help Center (Clarksburg, West Virginia)

The Commission supports the development, staffing, and operation of a physically located self-help center. The Commission voted to recommend to the Court the establishment of a physical self-help center to be located at the law library in the Harrison County Courthouse. Reports to the Commission indicate that this particular law library is accessed regularly by the public. The Commission supports a physical self-help center to provide assistance in several ways. First, a self-help center which is accessible to those who are more comfortable with a walk-in approach to conduct research, fill out forms, ask questions, or access a computer would be served with a center located in the current Harrison County Law Library. Second, in order to provide assistance to the entire State, the Commission supports the establishment of a toll-free phone service, answered by an appropriately trained staff person who is physically located in the Harrison County Law Library. Third, the physical self-help center would provide support for the potential online self-help center to be located on the Court's website.

b. Online Self-Help Center (Court's Website)

i. Forms

The Commission supports the development of Court-approved, plain language forms to be accessible and available on the Court's website. For those who seek to navigate the West Virginia court system on their own, accessibility to Court-approved plain language forms is vital. The Commission proposes to work with the appropriate divisions within the Administrative Office of the Courts to develop Court-approved plain language forms which will be available on the Court's website.

ii. Internet Access to Assistance for Self-Represented Litigants

The Commission supports and encourages an online self-help center to provide assistance, forms, and general information for the general public. The Commission recognizes that the internet has become the "go to"

resource for information. The great majority of people have access to the internet in some way, whether it is in their own home, through a friend or relative, a cell phone, a public library, a church, or some other entity. The Commission believes that the most effective way to provide assistance to the broadest group of people seeking to navigate the court system is to develop, implement, and maintain an online self-help center accessible through the Court's website to provide access to instructions, Court-approved forms, frequently asked questions, and other areas of specific interest to self-represented litigants and others needing assistance in navigating the civil justice system. The Commission proposes to work with the appropriate entities within the Administrative Office of the Courts to develop an online self-help center that would answer questions, provide guidance, and make available plain-language, fillable, Court-approved forms.

2. West Virginia Online Legal Assistance Help Center

The Commission endorses a West Virginia Online Legal Assistance Help Center to assist those who have legal questions and to provide attorneys with the opportunity to provide pro bono legal assistance. The Commission supports the implementation of a project, via a partnership between Legal Aid of West Virginia and the West Virginia State Bar, mirroring OnlineTNJustice.org. The Commission, via its Director, introduced the project to Legal Aid of West Virginia and The Lawyer Information Service/Lawyer Referral Service Committees of the West Virginia State Bar and encouraged the development of the project for use in West Virginia. The project is based on a walk-in clinic or dial-a-lawyer model where clients request brief advice and counsel about a specific civil legal issue from a volunteer lawyer. Lawyers provide information and basic legal advice without any expectation of long-term representation. The system screens clients for eligibility, and, if qualified, allows them to post a question to a private messaging system. The questions are answered by private attorneys volunteering their time. A client has the ability to check the system for answers at any time and the attorney has the ability to answer a question at a convenient time from anywhere via his or her computer. Only the name of the client is shared with the volunteer attorney providing assistance. This project provides assistance to those who may be turned away from Legal Aid due to funding cuts or statutory restrictions and provides an opportunity for attorneys to engage in pro bono work. The Tennessee project has agreed to license the program, free of charge, to any access to justice organization which will use it to provide pro bono services.

Because of the pro bono public nature of the limited scope representation provided in this project and because of the probable involvement of Legal Aid of West Virginia as the administrator, the general rules for lawyers as to conflicts of interest do not apply to lawyers' participation in the project. The Commission does, however, recommend a change to the West Virginia Rules of Professional

Conduct to address conflicts of interest that the lawyer actually knows of at the time he or she receives or answers a client's question.

3. Pro Bono Support Efforts

The Commission recognizes that the Court has direct influence on lawyers, and thus a crucial component of its Strategic Plan is to focus on voluntary lawyer participation in pro bono opportunities. Although the current economic climate makes resources scarce, it is important to remember that the time and expertise of lawyers are critical resources. One of the Commission's primary goals is the involvement of more lawyers as volunteers to meet the legitimate, unmet civil legal needs of West Virginia citizens.

Lawyers should be encouraged, creatively and consistently, to do pro bono work. The Commission proposes to work with the West Virginia State Bar and Legal Aid of West Virginia to establish a more comprehensive pro bono referral network across the State to match interested and successfully recruited volunteer lawyers with pro bono opportunities. While lawyers do generously volunteer their time, resources are required to screen clients, organize advice clinics, recruit and assign more volunteers, provide malpractice insurance coverage for the volunteers, and orchestrate a system of regular and smooth referrals. Legal Aid of West Virginia has an effective system in place to do this, but only certain clients are eligible for these services and more resources are needed to recruit lawyers. A more comprehensive pro bono referral system is needed for non-Legal Aid eligible clients.

In order to bring about systemic change, the Commission recommends a voluntary pro bono referral system that will:

- a. Match cases and clients in need to volunteer lawyers across the State;
- b. Explore ways to provide malpractice insurance for pro bono lawyers in expanded pro bono settings;
- c. Facilitate multi-organizational support and collaboration (including Legal Aid of West Virginia, West Virginia Senior Legal Aid, bar associations, mediation groups, faith-based organizations, and many other service providers and organizations); and
- d. Use technology to provide statewide services.

The Commission recommends and supports the following:

- a. Planning a Pro Bono Summit by the Commission's Pro Bono Committee to educate, encourage, and provide pro bono opportunities for members of the Bar.

- b. Analyzing the viability of proposing legislation that provides for civil negligence immunity for attorneys who undertake certain civil pro bono cases (i.e., domestic relations, landlord/tenant cases, etc.) in order to reduce the concerns of attorneys over liability from taking on pro bono work.
- c. Developing and implementing a strong pro bono network across the State, coordinating with the West Virginia State Bar, Legal Aid of West Virginia, West Virginia Senior Legal Aid, the West Virginia University College of Law, and other interested organizations by the following:
 - i. Working with the West Virginia University College of Law to promote the growth and expansion of programs which foster and encourage law students to participate in pro bono opportunities and its clinical law program;
 - ii. Supporting law school programs that encourage future lawyers to engage in pro bono legal assistance as part of their ongoing professional development;
 - iii. Exploring the establishment of an Access to Justice Summer Internship program to allow for student interns to volunteer at recognized legal aid programs during the school year;
 - iv. Encouraging law schools to provide scholarships to qualified students who will commit to a minimum of three years of service with a legal aid provider; and
 - v. Encouraging law schools to provide fellowships for students to work with legal aid providers.

4. Education and Action: Attorneys, Judges, Magistrates, Law Enforcement, Clerks, Legislators, Executive Officials, and the General Public

A critical component of the Commission's activities moving forward will be to develop and foster strong collaborative relationships with state and local bar associations, the judiciary, magistrates, law enforcement, clerks, legislators, executive officials, and others. Also critical to furthering the Commission's goals is the ability to provide better information to the public across the State, including self-represented litigants, policymakers, general social service providers, the faith-based community, and others. This outreach would also include serving targeted groups, such as those with language barriers and disabilities, who face special barriers with access to justice. The Commission is acutely aware of the need to help the public obtain better information and navigate the legal system on a day-to-day basis and to educate those who encounter individuals requiring assistance on recognizing what the needs are and relaying what is available to meet those needs. The Commission, through its committees, will explore the development of projects, informational events, continuing legal education opportunities, written materials, and other means to forge partnerships and informational opportunities for those needing or providing legal assistance.

a. Education

In order for the Commission to be effective, people need to be aware of its existence and its mission. The Commission must be proactive in educating members of the Bar, the judiciary, magistrates, law enforcement, clerks, legislators, executive officials, and the general public about the Commission and its goals. There are many mechanisms by which to provide information and education, some of which may include the following:

1. Developing emails, direct mails, meetings, clinics, videos, and other creative means concerning the barriers experienced by those who need to navigate the civil justice system.
2. Introducing the Commission's Report, Recommendations, Strategic Plan, and future projects to the legal community via the State Bar Blast and other methods.
3. Developing articles and/or ads for publication in the West Virginia Lawyer Magazine.
4. Increasing the Commission's presence among the Bar, the judiciary, magistrates, law enforcement, clerks, legislators, executive officials, and the general public.
5. Delivering information through the press about the work of the Commission and educational or informational opportunities sponsored by the Commission.
6. Exploring the potential for a presence on social media to provide information about the work of the Commission and educational and informational opportunities sponsored by the Commission.
7. Creating a Commission logo for use on official documents, correspondence, and other appropriate materials.
8. Offering training by developing and conducting an educational campaign for attorneys, judges, magistrates, law enforcement, clerks, legislators, and executive officials on the rights and needs of self-represented litigants in the civil justice system and how to facilitate the relationship.
9. Developing and implementing continuing legal education (CLE) opportunities to educate attorneys and judges about the practice of "unbundling", or "limited scope representation", of legal services as a means to provide legal services to those of low or modest means.
10. Updating and maintaining the Commission's webpage.
 - i. The Commission seeks to develop its webpage, located on the Court's website at <http://www.courtswv.gov/court-administration/access-to-justice.html>, as a "one-stop" location where those who are experiencing barriers to the civil justice system go for help or guidance about where to go for help.
 - ii. The Commission's webpage should be updated and maintained to include information that would be helpful to the public, including, but not limited to, the following: links to forms; legal services information, including links to Legal Aid of

West Virginia, the Family Refuge Center, Veterans' assistance, West Virginia Senior Legal Aid, domestic violence assistance, and others; the online self-help center when established; the physical self-help center information when established; educational opportunities; informational clinics; and the West Virginia Online Legal Assistance Help Center project.

b. Action

The Commission, via its committees, should take an active role in the development of projects and programs which are responsive to the needs of West Virginians in accessing the civil justice system. The Commission should be proactive in creating or supporting opportunities for providing assistance to self-represented, low income, and modest means litigants through attorneys, judges, magistrates, law enforcement, clerks, legislators, and executive officials.

1. The Commission recommends expansion of committee membership to include non-attorneys, those who specialize in particular interest areas and are in charge of or have involvement with certain interest groups, and those who may have experienced barriers in particular areas within the civil justice system. Having broad-based committee membership provides the Commission with diverse ideas and provides opportunities to bring those with common interests together to solve problems affecting particular interest groups.
 2. Recognizing that new problems and barriers concerning access to the civil justice system may continue to be brought to the attention of the Commission, it will be necessary for the Commission to develop and create new committees to address concerns that do not fall under the purview of already established committees. The membership of new committees should include lawyers and non-lawyers, and representatives of groups with common interests in the issues to be addressed by the newly formed committees, as well as others with interests, knowledge, expertise, and/or experience in the subject matter to be addressed by the committees.
 3. The Commission should help and encourage maintenance and expansion of West Virginia's systems for the delivery of legal services.
- 5. Continue to Examine, Identify, and Analyze Barriers West Virginians Face When Using the Legal System and Address Existing and Proposed Laws, Rules, and Regulations that may Adversely Affect Access to Justice in West Virginia (Short and Long Term)**
- a. **Examine, Identify, and Analyze Barriers**
 - i. Continue to receive input from the general public regarding legal barriers.

- ii. Continue to examine, identify, and analyze barriers as an ongoing duty, including the following: domestic relations, assistance for the disabled, seniors, veterans, landlord/tenant issues, Limited English Proficiency (LEP) litigant issues, workers' compensation, financial barriers (where a legitimate financial need exists in trying to obtain legal representation), and others as they are identified.
- iii. Continue to monitor national trends, issues, and barriers that may affect West Virginia citizens (i.e., implicit bias).

b. Address Laws, Rules, and Regulations

- i. *“Unbundling” or “limited scope representation” rules.* The Commission should review, compare, and monitor the rules governing unbundling or limited scope representation in other states, as well as the American Bar Association’s Model Rule, to the current rules in West Virginia. Because providing this type of legal representation to those with legitimate legal needs enables representation and removes barriers to the civil justice system, the Commission should propose any necessary changes to the current rules in West Virginia, as well as educate involved parties and promote the availability of such representation. Specifically, Rule 1.2(c) of the West Virginia Rules of Professional Conduct should be updated to more specifically coincide with the American Bar Association’s Model Rule 1.2(c), which addresses limited scope representation.
- ii. *Ghostwriting rules.* The West Virginia Lawyer Disciplinary Counsel’s Legal Ethics Opinion 2010-01 is a major barrier to access to justice for those needing legal assistance but unable to afford it. The Commission should work with and recommend to the Court the overruling of the opinion.

6. Funding of Strategic Plan Objectives

- a. Recommend to the West Virginia Access to Justice Foundation the need to obtain stable funding to support the projects and initiatives identified in the Strategic Plan.
- b. Assist the West Virginia Access to Justice Foundation with identifying and obtaining grants that support the projects and initiatives identified in the Strategic Plan.
- c. Work with the West Virginia Access to Justice Foundation to ensure wise and efficient use of available resources.
- d. In collaboration with the West Virginia Access to Justice Foundation, explore potential resources for funding, services, collaboration, and support from the following:
 - i. West Virginia University College of Law, including the Clinical Law programs;
 - ii. Legal Aid of West Virginia;

- iii. Law firms and individual attorneys; and
- iv. Other individuals and organizations as they are identified.

APPROVED by the West Virginia Access to Justice Commission on the 10th day of December, 2013.



Jeffrey M. Shawver, Esq.
Chairman



Deborah M. Bogan
Director

12-31-2013

Date

12/31/2013

Date