



**A L A B A M A**  
**ACCESS TO JUSTICE**  
**C O M M I S S I O N**

**2008 Annual Report**  
**to the**  
**Supreme Court of Alabama**  
**and**  
**Alabama State Bar**  
**Board of Bar Commissioners**

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# Report of Commission Chair

The first full year of the Alabama Access to Justice Commission has been marked by some significant successes. Some of these, such as the switch to mandatory IOLTA, were well underway when the Commission was formed and would have occurred without the Commission's support or assistance. Others, however, such as the increase in *pro hac vice* fees – with the additional funds dedicated to access to justice, and the first-ever State General Fund appropriation for legal services to the poor were due in no small part to the efforts of the hard-working members of the Commission. One thing in particular stands out, though, about this first year, and what it means for the long-term goals of the Commission: the inspirational support that the Commission and its members have received from the leaders of Alabama's legal profession.

As many know, Chief Justice Cobb made the Access to Justice Commission one of her first priorities when she took office. Her support and encouragement did not stop with the entry of the Order establishing the Commission, nor with the appointment of the dedicated people who have volunteered their time to this mission. Since the Commission was formed in April of 2007, the Chief Justice has attended all but one of the eight meetings held. She has also made herself available to the members of the Commission at all times – and has featured the Commission and its work in many of her speeches and presentations across the State. For example, in April 2008, the Chief Justice was the lead speaker to the Alabama Leadership Forum on the topic of Access to Justice. She led a panel on the subject at the Alabama Judicial Conference's mid-year meeting in Huntsville in February, and will lead another panel at the Judicial Conference's annual meeting in July. Similarly, the support of the leadership of the Alabama State Bar has been overwhelming. As with the Chief Justice, since the Commission was formed, either the President, the President-elect or the President-elect designate of the Alabama State Bar (and often more than one) has attended every meeting of the Access to Justice Commission. Every request made by the Commission to the Bar has been embraced and encouraged. For this support – from the bench and from the bar – the members of the Commission are truly grateful.

There is a great deal of work to be done, but there is hope. Alabama began this journey literally at the back of the pack. As many have heard, when the Access to Justice Commission was formed, our State stood 51<sup>st</sup> in the nation in funding for civil legal services for the poor. To my knowledge, there has not been a study yet that factors in the recent improvements such as mandatory IOLTA, the State appropriation and the increase in *pro hac vice* fees, but it is likely that these great first steps still leave us close to the bottom. The Commission has a lofty goal: we want to implement the changes necessary to make our system for the provision of legal services to the poor the very best in the country. This will not happen overnight – but the leadership provided by our Chief Justice, by our Court and judiciary, and by our State Bar leadership demonstrate that with hard work and dedication, it is possible.

Edward A. (Ted) Hosp  
Chair



ALABAMA  
ACCESS TO JUSTICE  
COMMISSION

*The mission of the Alabama Access to Justice Commission is to coordinate, expand and promote effective and economical civil legal services for the poor and vulnerable people of Alabama.*

## Introduction

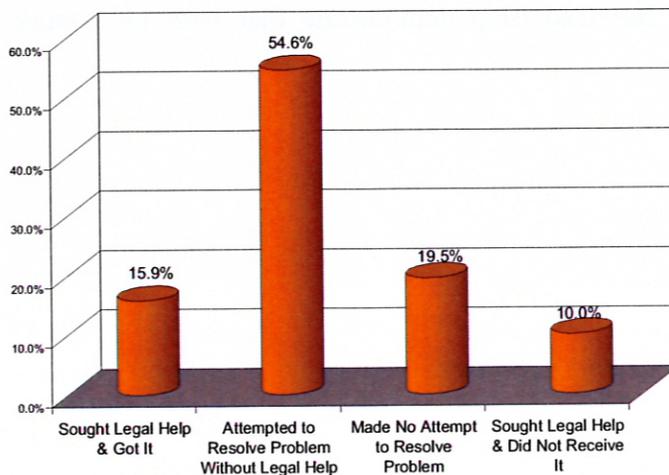
In 2006 Alabama citizens making 125% or less of the federal poverty received the assistance of an attorney with only 16% of their legal problems. Specifically, they only had legal help in 116,000 out of 733,000 legal problems they encountered. Approximately 9% of those who found legal help received free assistance through Alabama's providers of free civil legal aid. In the other 84% of problems people either attempted to solve them by themselves at best or simply did nothing at worst.

Recognizing that all of Alabama's citizens should have access to the judicial system regardless of their financial means, the

Alabama Access to Justice Commission was established by the Supreme Court of Alabama in April of 2007. The commission is charged with evaluating the current system of providing civil legal aid; coordinating the development of a plan to provide services statewide; identify and assist in the development of financial resources for sustained funding civil legal aid; educate attorneys, judges, legislators and the general public on the need for and insure their commitment to enhancing access for all; to promote collaboration and accountability among organizations concerned with access to justice; and address current and proposed regulations and laws that may adversely affect meaningful access to justice in Alabama.

The Access to Justice Commission has met every other month, alternating between Birmingham and Montgomery. Edward A. (Ted) Hosp of Maynard, Cooper and Gale was elected commission chair and Hon. Thomas ap R. Jones of the 4th Judicial was elected vice-chair. Alabama's funding for the provision of civil legal aid is the lowest in both the nation and the Southeast, and is almost exclusively dependent on federal funding. Commission members are taking their charge seriously to expand resources while providing the best services

How Low-Income Alabamians Resolved Legal Problems in 2006



possible with the resources currently available.

Progress has been made in expanding financial resources through the conversion of Alabama's Interest on Lawyers' Trust Accounts (IOLTA) program to mandatory and in receiving state funding for the fiscal year beginning October 1, 2008. Work has also begun to expand services available to low-income citizens through several different means. This report describes the commission's work in its first year of operation.

## **Committee Reports**

Four committees were established:

*Communications*, Robin Hansen Hinkle, Chair

*Delivery of Services*, Dean John Carroll, Chair

*Finances*, Frances Heidt, Chair

*Legislative*, Senator Myron Penn, Chair

Committees met throughout the year, established goals and worked toward meeting their goals. Each committee has prepared a report on its work this year, which can be found on the pages that follow.

## Communications Committee

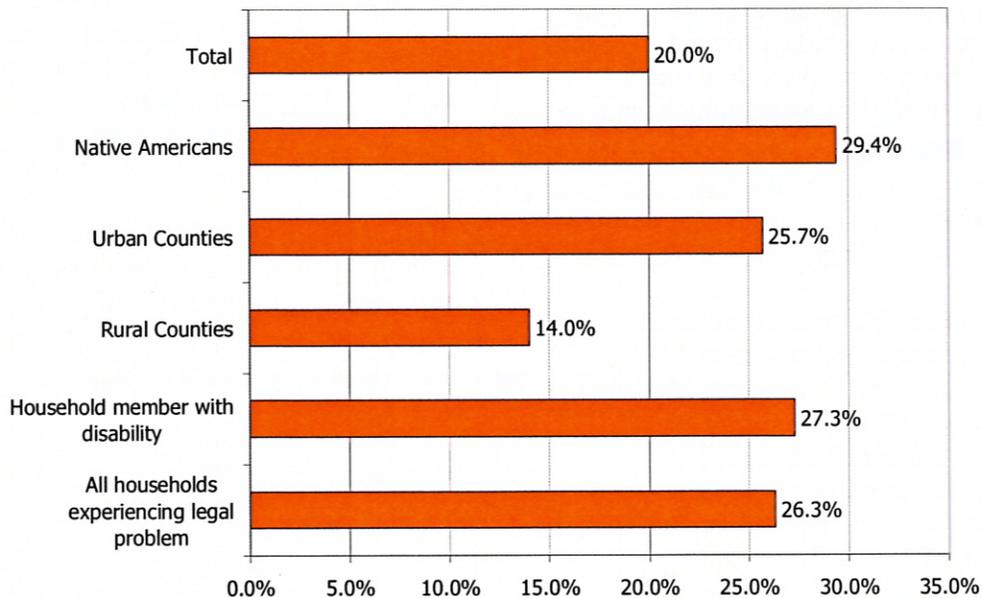
The Communications Committee is charged with preparing and disseminating information about the Alabama Access to Justice Commission regarding its mission and its work. This first year the committee has focused on preparing basic tools to educate the public, state officials, lawyers and others about the need for legal services for the poor. In this regard, the committee will be publishing a legal needs survey that was prepared for the state as an assessment of the gaps in and the needs of the system.

The committee has also created a brochure to be provided to various types of groups regarding the need for legal services. The brochure gives further information about the

commission and its vision. The committee has also used these materials as a basis to create a website that will be launched after the Alabama State Bar Annual Meeting.

The Communications Committee has additionally been working with the Legislative Committee to prepare materials that can be used to advocate for funding and state legislation to begin addressing gaps in the network of legal services provided to the poor. In the upcoming year, the committee intends to focus on educating the public and others about the needs for legal services as well as assisting the Legislative, Finances and Delivery Services Committees with materials required to accomplish their goals.

**Low-Income Citizens Aware of Free Civil Legal Aid**



## Delivery of Services Committee

### INTRODUCTION

The past year has been an active one for both the Access to Justice Commission and its Delivery of Services Committee. In its preliminary report, the committee described the current system for delivering legal services to the poor. In this past year, the Committee has had the opportunity to learn more about the current delivery system and in addition understand better the needs of the poor. The information gathered in the past year has compelled a single global conclusion that is not surprising - the legal needs of the poor exceed the capacity of the present system. That conclusion has set the stage for the next phase of the committees' work - to explore expansion of the system. This report details the present and future activities of the Delivery of Services Committee of the Access to Justice Commission.

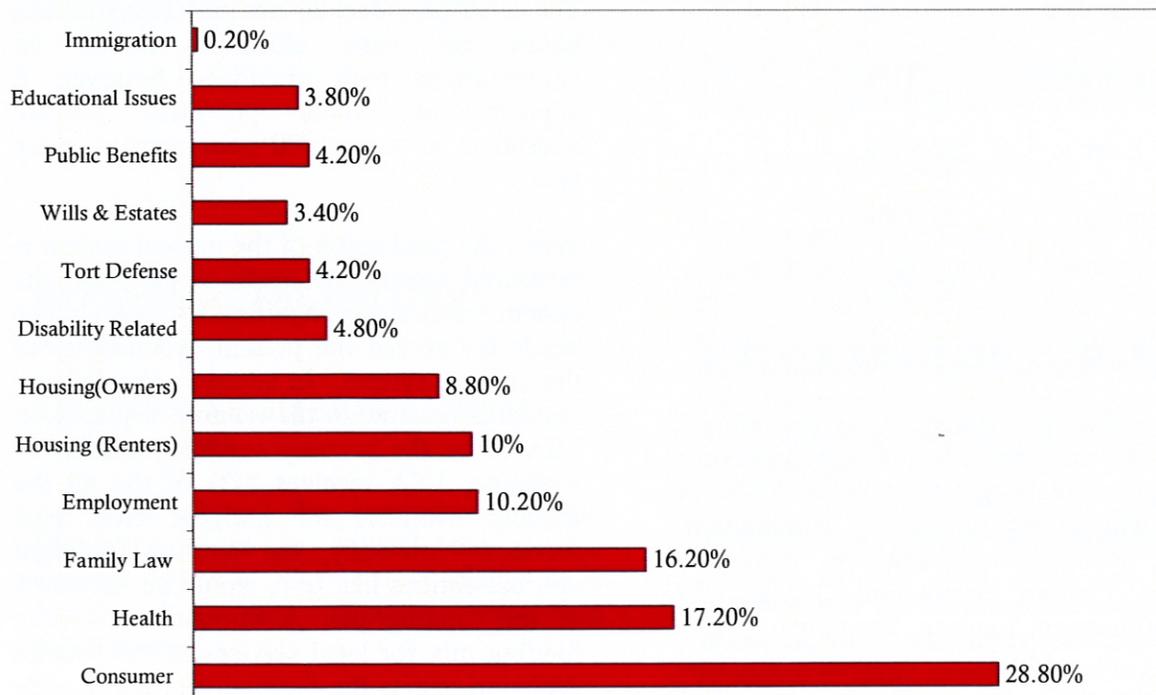
### NEEDS ASSESSMENTS

The committee's efforts to assess the needs of the poor for access to our civil justice system has been aided by two excellent reports - one from the Southeast Research Study that was referenced in our preliminary report and one from the early part of this year done by Legal Services of Alabama.

The Southeast Research Study was begun in 2006 and completed in February of 2007. Data was collected from a telephone survey of 500 male and female heads of households who were living at or below 125% of the poverty level. That data was supplemented by an internet survey that was e-mailed to 61 legal aid attorneys, 12 legal aid paralegal and legal assistants and 55 social service agencies.

The Southeast Research Study concluded that 48% of the low income households (422,119 households) experienced some sort of legal problem in 2006. The types of legal problems experienced are as follows

**Proportion of Low-Income Alabama Households Experience Legal Problems in 2006 by Type**



The total legal problems experienced by low income households in 2006 was 733,643.

The Southern Research Study was followed by a survey done by Legal Services of Alabama which was begun in 2007 and concluded in 2008. That study was conducted entirely through in-person contacts . Vista volunteers traveled to community fairs, senior citizens facilities, public health departments, veterans hospitals and other facilities where they were likely to encounter members of low income households. They focused on obtaining information from the blind and hearing impaired, elderly persons, Spanish speaking persons, and the extremely rural poor ( those with limited or no telephone access). A total of 768 individuals living at or below 125% of the poverty level were surveyed.

64% of the persons surveyed experienced a legal problem in the past 12 months. The households experiencing a legal problem in the past 12 months averaged 7.6 problems during that time. The types of legal problems experienced , according to the LSA survey, are as follows

Consumer	48.83%
Public Benefits	49.83%
Housing (Rental)	34.51%
Family Law	32.94%
Employment	29.93%
Health	26.9%

### **THE PRESENT DELIVERY SYSTEM**

As the committee noted in its preliminary report, the main providers of legal assistance to the poor are Legal Services of Alabama (LSA) which has offices in Birmingham, Mobile, Montgomery, Huntsville, Anniston, Florence, Dothan, Selma and Opelika and local Volunteer Lawyer Programs (VLP) located in Mobile, Birmingham and Huntsville and the statewide Volunteer Lawyer Program in Montgomery. While there

are not significant restrictions on the kinds of cases which the VLP programs may handle, there are significant restrictions imposed on Legal Services. Lawyers employed by the program, for example, are not allowed to file a class action even though that procedural device might be the most efficient way to resolve a legal problem facing the poor.

Other providers are the University of Alabama Law School which provides through its Civil , Elder and Domestic Abuse Clinics, Jones Law School through its Family Violence and Elder Law Clinics and the YWCA Family Law Center.

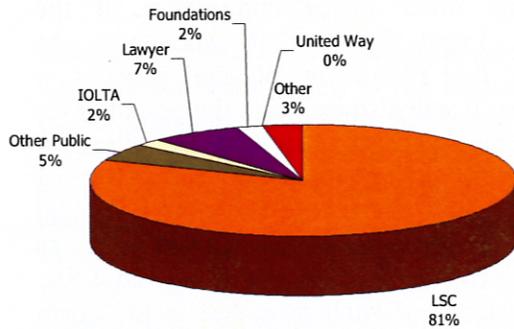
In 2006 and 2007, cases closings by LSA and the VLP programs were as follows

	<b><u>2006</u></b>	<b><u>2007</u></b>
LSA Staff and Paid Referral Cases	9,041	9,203
Mobile VLP	479	900
Birmingham VLP	133	149
Huntsville	No data	No Data
Statewide VLP	406	454

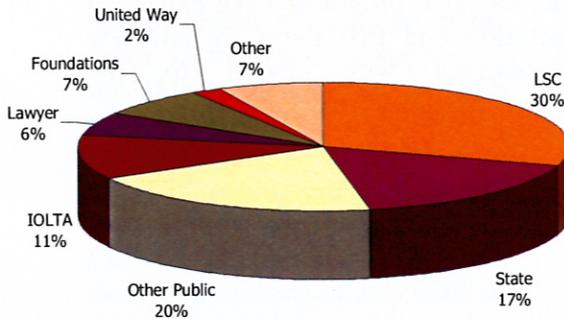
The other providers do not maintain statistics based on case closures. Based on conversations with providers, however, it appears that these providers provide assistance to some 1000 poor persons every year.

When the production of the present system is measured against the needs of the poor, the system comes up significantly short. The needs far exceed the present productivity of the delivery system. In addition, the delivery system is unusual in the reliance it places on LSA to be the primary service provider. In Alabama, LSA receives 81% of the all the funding available for indigent civil legal services. Nationally, the funding for legal services entities like LSA would be only 30% of the funding pie. A comparison of the funding mix for legal services to the poor in Alabama versus the funding mix nationwide is instructive

**2007 Alabama Civil Legal Aid Funding**



**2007 National Civil Legal Aid Funding**



**EXPANDING THE DELIVERY SYSTEM**

**The Present Efforts - Expanding the VLP programs**

As noted above, the committee is now examining ways to expand the current delivery system. Early discussions have focused on the following expansion possibilities

- 1) Increasing the number of cases closed by the VLP's
- 2) Increasing the number of cases closed by LSA
- 3) Creating an additional provider of legal services to the poor which does is not burdened by the restrictions currently imposed on LSA
- 4) Expanding assistance to pro se litigants

The committee has begun its examination of the potential for expanding the system by focusing on the VLP programs. It was the consensus of the committee that expanding the VLP programs was a good first step toward expanding the entire system. Consequently, in the Spring, the committee contacted the VLP providers and asked them to answer 2 questions

- 1) What could be done to increase the number of cases handled by the VLP programs and
- 2) In addition to increasing the number of cases handled by the VLP programs, what other recommendations do you have for increasing the access of the poor to the Civil Justice system.

The VLP programs responded with excellent suggestions which focused on three areas

1. Increase intake and referrals

VLP programs can increase the number of cases they handle only if they are able to increase the number of persons whom they refer to volunteer lawyers. They can increase the number of persons they refer only if they are able to create more public awareness of the program and then provide adequate intake for those cases.

The Mobile program is the gold standard VLP program for the state. Both the statewide program and the Birmingham program have indicated their willingness to expand their programs. That expansion, however, will require additional resources.

2) Increase the referrals from LSA.

Referrals are an important part of the VLP programs. Cases referred from LSA have dropped significantly since the 2004 merger of the three federally funded Legal Services Programs into one. In order to increase the number of cases handled by the VLP programs, efforts must be made to increase the referrals from LSA.

3) Increase the number of lawyers participating in the VLP programs

As the number of cases referred by VLP programs increases, more lawyers will have to be recruited to the programs. This appears to be a goal that can be easily accomplished.

**Next Year's Focus**

In the next year, the committee will continue its focus on the VLP programs and expanding the cases the programs handle. As noted above, the Mobile program is the finest in the state and will serve as the model.

The committee will also engage in dialogue with the other major component of the system, Legal Services of Alabama, to explore the expansion of the services it provides. It will also examine the potential for expanding assistance to pro se litigants. Lastly, it will explore the possibility of creating additional providers to provide legal access to the poor which are not as constrained in their assistance as the LSA. The existence of such providers is the norm throughout the country.

The committee will begin the next phase of its work by convening a meeting of the VLP programs to discuss their expansion. That meeting will be followed by a meeting to discuss LSA.

The goal of the committee is to be able to report to the Commission at this time next year, that the VLP programs have expanded their operation and that there are concrete recommendations with regard to the expansion of other services.

## Finances Committee

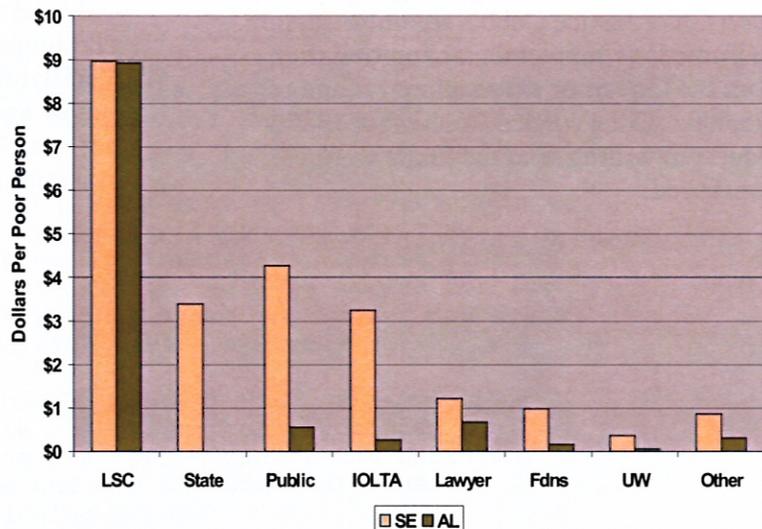
The past year has been a successful one for the Commission with regard to the improvement of the financial picture for Access to Justice activities. While there is still a long way to go, given that Alabama currently has only \$11 per person included in the poverty population to spend to provide access to the civil justice system, the finance committee and the Commission is steadily working toward its long-term five-year goal of increasing Alabama's funding to 70-75% of the national average of \$26 per person.

Toward that end, the Finances Committee established a one-year goal of working toward a change in the Alabama State Bar IOLTA program. The committee drafted and presented a resolution of the entire Commission in support of the Alabama Law Foundation and Alabama State Bar's request to change the Alabama rules of the IOLTA program from an opt-in to a mandatory program. The Commission passed the resolution during its meeting in July 2007 at the annual Alabama State Bar meeting and immediately presented it to the incoming president of the bar, Sam Crosby, and the Alabama Board of Bar Commissioners. At the Bar Commissioner's meeting during the annual meeting, the bar commissioners approved the proposed amendment to the IOLTA rules, and later presented the rule to the Supreme Court of Alabama, which approved the rule unanimously on September 27, 2007. As a result of this change, the finance committee estimates that the new IOLTA rules will bring approximately \$1 million into Alabama for Access to Justice activities.

The Finances Committee also established a one-year goal of working toward an increase in the fees charged by the Alabama State Bar to lawyers seeking to be admitted pro hac vice in Alabama cases. The committee proposed

an increase in the pro hac vice fees, and that the amount of the increase be allocated to the Access to Justice Commission for its work. The Executive Committee then worked with the Alabama State Bar President, Sam Crosby, who presented a request to the Supreme Court of Alabama, and ultimately, an increase from \$100 to \$300 was approved with the additional \$200 to be used for civil legal aid. This rule change is expected to generate an additional \$100,000 a year.

2007 Southeast Funding Comparison



The Finances Committee also established a one-year goal of working to educate judges and lawyers about cy pres awards and the eligibility of the Commission as a recipient of such awards. The committee is still working on this goal, but is pleased to report that through committee member Buck Watson, the Commission will be the recipient of a cy pres award in the amount of approximately \$31,000. The committee will continue with this goal and incorporate it into its three-year goals.

The committee also established a three-year goal of educating the general public and corporate grant makers of the lack of funding for the poverty population's access to the civil justice system, and targeting five major corporate foundations for funding over the next three years.

## **Legislative Committee**

The Legislative Committee met initially and working in conjunction with Chief Justice Cobb decided to request a meeting with Finance Director Jim Main. This meeting was to request that the Access to Justice Commission be granted an appropriation in the State General Fund Budget as proposed to the Legislature by Governor Bob Riley for FY 2009. The Legislative Committee requested that Senator Myron Penn, Tracy Daniel, and Kim Adams attend the meeting with Finance Director Jim Main. The meeting was a success with Jim Main agreeing to provide, upon Chief Justice Cobb's recommendation, an immediate supplemental appropriation from the Governor's discretionary fund of \$75,000.. Chief Justice Cobb made the request in writing, and the funds were transferred.

The Legislative Committee met formally and informally several times, but the most important being before the Regular 2008 Legislative Session started in February to determine a strategy for obtaining funding. Several members of the Committee worked with influential State Representatives and Senators throughout the Regular Legislative Session to insure funding for Access to Justice. As a result of the Committee's hard work Access to Justice was given an appropriation of \$200,000 in a very lean budget year. We are setting our goals for next year and are in hopes that we will have continuing success in funding by showing the Legislature that the funding is being used wisely and, more importantly, that the funds are actually helping indigent citizens in Alabama.

## Appendix 1

### Order Establishing the Alabama Access to Justice Commission

IN THE SUPREME COURT OF ALABAMA  
April 24, 2007

#### ORDER ESTABLISHING THE ACCESS TO JUSTICE COMMISSION

WHEREAS, the Alabama judicial system is founded upon the principle of equal justice for all people regardless of their financial means; and

WHEREAS, an Access to Justice Commission will serve a critical function that is important to the effective administration of a judicial system that is accessible to all persons, which is of fundamental importance to the citizens of Alabama,

Now, therefore, it is hereby ordered that the Access to Justice Commission is hereby established and shall be administered by the Alabama Law Foundation, and is charged with the responsibility of assuring quality access for low income residents and others in Alabama who suffer disparate access barriers to the civil justice system.

The Access to Justice Commission shall consist of not less than 15 but not more than 23 members appointed by the Supreme Court. In making its appointments, the Court may solicit nominations from and may include individuals associated with the following groups:

- Administrative Office of Courts
- President, Alabama State Bar
- Alabama Law Foundation
- Legal Services Programs
- Volunteer Legal Services Community
- Advocacy Groups Representing the Interest of Low Income Alabamians

The membership of the Commission should reflect the diverse citizenry of this state.

The commission shall elect one member as the chairperson of the Commission who shall serve a term of two (2) years and who shall be eligible for reappointment for an additional 2-year term. An individual may continue to serve as chairperson notwithstanding the expiration of his or her term on the Commission.

Appointments shall be for a three (3) year term. Commission members shall be eligible for reappointment for additional terms. The members shall draw their initial terms by lot, so that seven of the initial members shall serve a one-year term, seven shall serve a two-year term and the remaining members shall serve a three-year term. All subsequent appointments of members shall be for terms of three years.

The Access to Justice Commission shall work to:

- Study and evaluate the performance and effectiveness of our civil legal services system against an objective set of standards and criteria to better understand the needs of those who suffer disparate treatment or access barriers to justice in Alabama.
- Coordinate, and oversee a strategic plan for a statewide, integrated, non-duplicative legal services delivery system, and devise and implement new programs to expand access to justice opportunities.
- Identify, propose and assist in the development of immediate resources and sustained, long-term funding for essential civil legal services for the poor people of Alabama.
- Implement public education to inform and secure involvement and commitment on the part of attorneys, the judiciary, the legislature and the general public to insure effective access to the civil legal system for the poor people of Alabama,
- Promote and foster collaboration, cooperation, coordination, and accountability among agencies and organizations concerned with access to justice in Alabama.
- Assess existing and proposed laws, rules, and regulations that may adversely affect meaningful access to justice in Alabama.

The Access to Justice Commission may adopt internal operational rules pertinent to these powers and duties.

The Access to Justice Commission shall be funded through the Investment in Justice Act of 1999, and shall have authority to establish a budget and approve expenditures.

The Commission shall file with the Supreme Court and the Board of Bar Commissioners of the Alabama State Bar an annual financial report and an annual report outlining its work during the prior 12 month period.

Cobb, C.J., and See, Lyons, Woodall, Stuart, Smith, Bolin, Parker, and Murdock, JJ., concur.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 24<sup>th</sup> day of April, 2007

*Robert G. Esdale, Sr.*

Clerk, Supreme Court of Alabama

## Appendix 2

### Alabama Access to Justice Commission

**Edward A. (Ted) Hosp, Chair**  
*Maynard, Cooper & Gale*  
Birmingham

**Hon. Thomas ap R. Jones, Vice-chair**  
*4<sup>th</sup> Judicial Circuit*  
Selma

**Henry A. Callaway, III**  
*Hand Arendall*  
Mobile

**John L. Carroll**  
*Cumberland School of Law*  
Birmingham

**Thack Dyson**  
*St. Paul's Episcopal Church*  
Daphne

**Alan Engel, Treasurer**  
*Crowne Partners*  
Birmingham

**Robin Hansen Hinkle**  
*Turning Point Rehabilitation, Inc.*  
Birmingham

**James H. Fry**  
*Legal Services Alabama*  
Montgomery

**A.E. (Nick) Gaede**  
*BE & K, Inc.*  
Birmingham

**S. Frances Heidt**  
Birmingham

**Hon. Rhonda Jones-Hardesty**  
*District Court of Chilton County*  
Clanton

**Sheryl Threadgill-Mathews**  
*BAMA Kids*  
Camden

**Beth McFadden Rouse**  
*McFaddenLyon & Rouse*  
Mobile

**Sister Lynn McKenzie**  
*KnightGriffithMcKenzieKnight & McElroy*  
Cullman

**Dr. Charles R. Nash**  
*University of Alabama System*  
Tuscaloosa

**Sen. Myron C. Penn**  
*Penn & Seaborn*  
Union Springs

**Daryl Perkins**  
*Office of Congressman Artur Davis*  
Birmingham

**Robert D. Segall, Secretary**  
*CopelandFrancoScrews & Gill*  
Montgomery

**Robert C. Ward, Jr.**  
*Rushton, Stakely, Johnston & Garrett*  
Montgomery

**Herman A. (Buck) Watson**  
*WatsonJimmersonMartinMcKinneyGraffeo & Helms*  
Huntsville

### **Appendix 3**

#### **Alabama Access to Justice Commission Meetings**

April 5, 2007, Montgomery

May 10, 2007, Montgomery

July 20, 2007, Point Clear

September 13, 2007, Birmingham

November 8, 2007, Montgomery

January 10, 2008, Birmingham

March 13, 2008, Montgomery

May 15, 2008, Birmingham

July 11, 2008 (Sandestin Beach Hilton)