

# The Promise of the Constitution

WE THE PEOPLE  
insure domestic Tranquility, provide for the common  
and Posterity, do ordain and establish this Con  
Article 1.  
...ted in a Congress of the United States, which shall consist  
... by the People of the



ARKANSAS  
ACCESS TO  
JUSTICE COMMISSION

2007 Annual Report

We the People of the

"Justice is the end of  
government. It is the end  
of civil society. It ever has  
been and ever will be pursued  
until it be obtained, or until  
Liberty be lost in  
the Pursuit."

James Madison,  
The Federalist, No. Fifty One

## The Promise of the Constitution

*We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.*

Those first three words in the Preamble of our Constitution -- We the People -- forever separated our new government from any which had existed before. Power, all power, was ultimately vested in the People of the United States. A primary purpose of that power was to establish justice throughout the new country. Because the promise of justice is as important today as it was in 1787 when it was made, how do we continue to establish justice in the 21<sup>st</sup> century?

The Constitution instituted a sound system for the fair administration of justice. Article III created the federal courts. Article IV provided that the judicial proceedings of one state be accorded full faith and credit in every other state.

The Bill of Rights, through the 5<sup>th</sup> Amendment, required that due process of law be afforded to every person coming before the federal judicial system. The 14<sup>th</sup> Amendment applied

the due process requirement to the state judicial systems.

Today, justice and due process are slipping away from American citizens. Due process, or having one's day in court, has become an unattainable dream for the working poor. Those who cannot afford justice do not have justice. The promise made by our Founding Fathers to every American remains, for some, out of reach. The Arkansas Access to Justice Commission seeks to fulfill the Constitutional promise of justice for every Arkansan.



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## **Pursuing the Promise of Justice**

A new commitment has been made to achieve the Promise of Justice in Arkansas. It is part of an historical national effort which has grown since the late 1990's to include 25 states. In 2003, The Arkansas Supreme Court in response to a petition from the Arkansas Bar Association created the Arkansas Access to Justice Commission with a singular mission --

*to provide equal access to justice in  
civil cases to all Arkansans.*

Members of the Commission are appointed by the Supreme Court, the Governor, the Arkansas Bar Association, the Arkansas Senate, and the Arkansas House of Representatives. They are individuals working in the judicial system, the legislature, the law schools, non-profit legal and social services agencies, corporate counsel departments, and the business community. These volunteers understand the issues limiting access to the courts. They are committed to the ideal of justice for all, regardless of economic circumstance. Each member's charge is to pursue solutions to the significant gap between our principles of justice, equality, and fairness and the application of those principles to civil justice for all Arkansans.

To pursue the promise of justice the Commission first had to understand the current state of the civil justice system in Arkansas. Two important groups were asked to relate their experiences, opinions and concerns. First, the general public gave their input in a series of Town Hall meetings. Second, judges and circuit court clerks completed a survey which revealed the day to day issues they encountered while trying to administer justice.

## Town Hall Meetings

In 2006, the Commission held Town Hall Meetings in each of the state's four Congressional districts which were hosted by that district's representative. The Commission heard the testimony of over 150 clients, judges, attorneys, community service providers, and citizens concerned with the problems created when access to the justice system is not available. From those comments, several factors emerged which impact the quality and availability of justice.

### Poverty

Poverty is the dominant factor affecting access to the justice system. Legal services providers, with limited resources, are overwhelmed by the magnitude of low-income citizens' legal needs. Over 550,000 Arkansans live 125% of or below the federal poverty level. The legal problems of the working poor often have a snowball effect with one legal problem leading to another. Several participants related stories of domestic violence leading to an order of protection and divorce, with attendant child custody and property issues. Children's needs are not met because child support may not be paid. This impacts the family's budget and soon enough, debt collectors are calling. Children witness the violence and learn that as a way of life. Housing for the victim and children must be found and the abuser must be kept away from those premises or the abused partner is inevitably evicted.



Without adequate legal assistance the working poor exist in a hopeless world with no way out. No access to justice means many people lose faith in the system and may resort to other means to solve their problems.

### Immigration

The Town Hall meetings also revealed the special challenges created by immigration. From testimony by Marshall Islanders the Commission came to understand the unique legal status of this nearly 10,000 member community - the largest outside of the

# Justice, insure domestic

islands themselves. Although they were in the country legally and allowed to freely travel between the United States and the Marshall Islands, federal regulations prevented legal services providers from representing them. Subsequently, Commission members successfully sought to rectify this inability to access justice.

In addition, Arkansas has one of the fastest growing immigrant populations in the United States. Between 1990 and 2000, the number of immigrants working in Arkansas industries grew an astounding 201 percent. A number of legal issues have resulted from this population explosion. There are very few Arkansas attorneys with experience in immigration law. Immigrants are being taken advantage of by unscrupulous service providers who claim to have legal qualifications. Furthermore, there is a lack of certified court interpreters for non-English speakers throughout the state.

## Veterans

Veterans' legal needs are also severely impacted. The lack of civil legal support, especially for those veterans recently returned from Iraq, create an additional strain on those men and women who responded to the call of their country. Private attorneys are not allowed to charge a fee for veterans' disability claims, so many of them are unable to provide representation. Free legal services programs do not have the resources to assist as many veterans as there are in the state. The problem is enormous. Arkansas is 9<sup>th</sup> in the nation in the number of veteran residents; almost 14% of the population are veterans. Many veterans are uninformed about their rights and the benefit programs available to them, particularly with regard to injuries they sustained during service. Proper management of their affairs while on active duty was also an issue. Therefore, those who have served are left out of the system they fought to uphold.



## Circuit Judges and Clerks Survey

The Commission needed to understand the current conditions existing in the civil court system in Arkansas. To get this information, the Commission administered a survey to circuit court judges and clerks. The survey was designed to elicit their experiences and

concerns regarding self-represented [pro se] litigants. The Commission survey resulted in a number of significant findings:

- A majority of judges saw 5 to 30% of their cases pro se while a majority of clerks handled pro se litigants between 5 and 20% of the time.
- Both judges and clerks dealt with the following types of pro se cases: divorce, order of protection/domestic violence, child/spousal support, child custody/visitation, and name change.
- Fully 70% of judges and 88% of clerks experienced increases in pro se representation over the previous three years.
- Both judges and clerks frequently referred pro se litigants to the two free legal aid providers for assistance.
- Judges at 85% and clerks at 98% provided no special procedures for pro se litigants.
- Some 67% of judges and 83% of clerks held pro se litigants to the same standards as attorneys.
- Judges at the rate of 76% and clerks at 68% favored the development of standard protocols for the treatment of pro se litigants.
- Both groups agreed that the development and implementation of approved forms would be the top priority to improve pro se litigation.

*Judges and court clerks reported an explosion in the number of parties representing themselves over the past three years, most frequently in matters affecting families and children.*

## **Limited Civil Legal Aid**

The Town Hall meetings and the circuit court surveys revealed that the system of civil justice in Arkansas is stretched to the breaking point. Just 42 attorneys in the two legal aid organizations are trying to provide free legal services to a low-income population of over 500,000. The providers handled a variety of issues which frequently arise

# for the common

in poverty law and which were widely discussed at the Town Hall Meetings. Family law cases such as child custody, child support, and domestic violence were the most common, followed by consumer actions for fraudulent trade practices, debt collections, and bankruptcies. The legal aid staff of 42 attorneys handled almost 14,000 cases – an astounding caseload of 333 files per attorney, a number unheard of in private practice.

Federal money to support legal aid has been declining in both absolute and real terms over the past twenty years; flat interest rates have decreased funding from interest on lawyers' trust accounts, and the state of Arkansas is one of the few which does not appropriate funds to legal services providers. Resources are dwindling while economic poverty and its consequent legal problems are increasing.

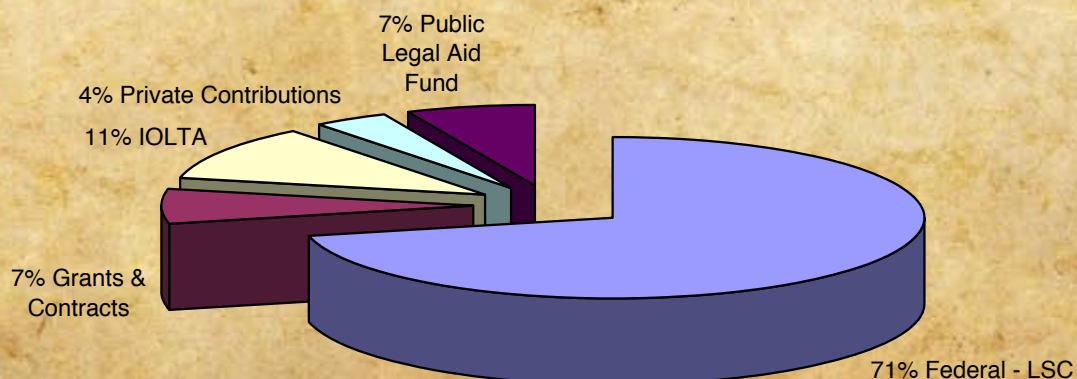
Studies from the Legal Services Corporation bear this out. In its August 2005 report "Documenting the Justice Gap in America," LSC found that for the general population, there was one private practice attorney for every 525 persons. On a national basis, for low-income persons there was one legal aid attorney for every 6,861 persons. For Arkansas, there is only one legal aid attorney for every 15,000 low-income persons.

## Civil Legal Aid Revenue in Arkansas 2007

**1 in 5 Arkansans are eligible for free civil legal aid. These are the poorest of the poor – people who are living on the edge.**

**This year over 28,000 Arkansans asked for help but more than 50% had to be turned away.**

**4 of every 5 dollars going to legal aid in Arkansas comes from the Federal government.**



## Fulfilling the Promise of Justice

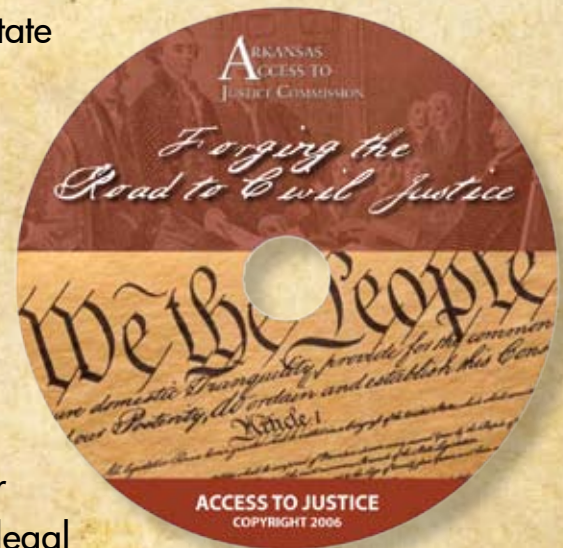
The Arkansas Access to Justice Commission quickly realized that the justice community should be informed about the crisis in the state's civil legal system. This education process needed to be tied to the highest ideals of the Constitution and the legal profession and the common decency of the Arkansas spirit. The next step was to provide immediate support to the components of the justice community which could progress on their own in expanding access to civil justice. Once these goals were met, the Commission needed to provide legal information to the full community of citizens. Policy makers needed to be informed about the ongoing crisis, and about the limited financial resources devoted to civil legal aid. Combining these efforts would fulfill the Promise of Justice our Constitution requires.

## Educating the Justice Community

To educate the leaders of the justice community in the state about the conditions revealed through the Town Hall Meetings, the Circuit Court surveys and the resource limitations of the legal aid providers, the Commission produced a DVD entitled Access to Justice. The DVD showcases three actual clients who benefited when the promise of justice was fulfilled.

In the first case, legal aid protected a battered mother and two small children from the abusive husband under the Violence Against Women Act. In the second case, legal aid resolved an erroneous overpayment letter from the Social Security Administration demanding \$18,000 from an elderly grandmother who was raising her abused granddaughter. In the third case, a pro bono attorney handled a complicated guardianship matter for a young boy whose Army father was killed in Iraq so that the child could receive survivor's benefits from his father's service.

As Justice Annabelle Imber states in the opening of the DVD; these are people living on the edge. The promise of justice regarding fundamental aspects of life such as



# Welfare, and secure

housing, health, income stability, and protection from violence is a promise that a decent, humane, constitution based society must begin to fulfill.

The DVD is regularly presented at various public forums and in county bar association meetings throughout the state. The DVD is also available to everyone through the Access to Justice Commission's website at [www.arkansasjustice.org](http://www.arkansasjustice.org).

## Expanding Support Within the Justice Community

### Court Assistance Projects

Based on input from the Town Hall meetings and the survey of judges and clerks, the Commission initiated a series of court assistance projects to streamline the processes surrounding self-represented litigants. First, the Commission created a website [www.arkansasjustice.org](http://www.arkansasjustice.org) to educate both the general public and the legal community about the Commission and its work. The site provides resources and assistance to both court personnel and individuals choosing to represent themselves in court. The interactive system measured over one million page views in 2007 and is



views in 2007 and is

expected to become increasingly important to access to justice as expansion of its available resources continues.



The important jobs of the courts and clerks are simplified by the automated forms available on the website for self-represented litigants. The simple, easy to use process produces

all the required documents. It also provides step-by-step instructions on how to execute the documents as well as to what to do both before, during, and after the court appearance. Some of the currently available documents include an In Forma Pauperis motion for low-income people to request waivers of court and

service fees, an uncontested divorce action, and an expungement petition. Because the forms are court approved and Commission sanctioned, the process is fast and flawless. Clerks in particular are pleased with these forms since they expedite the proper functioning of the court system. The time savings generated allows them to provide greater access to additional individuals.

Brochures and posters advertising the automated system were developed for circuit court clerks. The materials explain in detail the three easy steps to online access of the information about the individual's legal concern and to access the automated forms. Busy court clerks can provide faster service by giving the brochures to self-represented parties. In addition to county courthouses across the state, these clear and concise materials are placed in public libraries, a frequent source of referrals to clerks.

## **Access to the Civil Justice System**

In addition there are 219 documents available to the public in the website's online legal library. These documents include fact sheets and sample letters and sample forms, including a collection agency "stop contact" letter, a living will, and security deposit demand letter. A Spanish version of the website contains ten Spanish fact sheets and forms in addition to a substantial legal FAQ in Spanish. Additional translations of documents continue for this population.

## **Pro Bono Projects**

In addition to the efforts to improve access and efficiency for self-represented litigants the Commission has acted to increase the number of attorneys who volunteer their services [pro bono] to low income Arkansans. The first step taken by the Commission was to petition the Arkansas Supreme Court to change the rules governing voluntary legal work as encompassed in Model Rule 6.1. The new rule encourages more pro bono service by the state's private attorneys for legal aid clients. The state's attorneys have an aspirational goal of 50 hours of free legal aid work per year. In addition, the new Rule encourages attorneys to make financial contributions to legal services providers. Last year the number of pro bono attorneys taking cases rose to over 700 with a conservative estimate of their services valued at over \$800,000. When coupled with their financial

# *to ourselves and our*

contributions the pro bono activities account for over \$1,000,000 in support of justice for low-income Arkansans.



In addition to advancing the rule change to encourage pro bono service, the Commission has promoted volunteerism through its websites. There are 809 documents exclusively available for use by pro bono attorneys. These documents facilitate the volunteer efforts on behalf of low-income clients by providing facts, forms and sample letters. To make pro bono participation even easier, a monthly e-newsletter is sent to volunteer attorneys with a list of available cases. Choosing a case is a simple matter of clicking on a link, so within a matter of hours of these cases being sent they have been accepted by members of the pro bono pool. All these online resources make it easier for pro bono volunteers to represent clients, help recruit additional volunteers, and provide a significant expansion of justice.

## **Increasing Resources for Justice**

In addition to education, court assistance and expansion of volunteer efforts cited above, there remains one critical ingredient which the Commission must influence if the Constitutional promise of justice is to be achieved in Arkansas. That ingredient is funding.

The Commission can and will continue to increase the human resources, the technical resources and the regulatory resources to close the gap between need and available legal aid. As this first annual report goes to press, self-help centers are being established around the state to assist both courts and pro se litigants. Law students will begin to play a more active role in providing legal aid support to some clients. And expansion of the pro bono pool of volunteers continues unabated.

The Commission was successful in the 2005 legislative session with the passage of Act 1894 which provided a fee of \$10 to the Public Legal Aid Fund for the reopening of cases in circuit court. This fee produces approximately \$350,000 for civil legal aid annually. Last year that meant some 1,212 additional citizens of Arkansas were provided legal aid. The Commission effort in the 2007 legislative session was not

successful in its request for an additional \$10 on the marriage license fee to be placed in the Public Legal Aid Fund. That meant there was no increase in the ability of the two legal aid organizations to provide services for low income Arkansans. The fulfillment of the Promise of Justice requires the State of Arkansas do its part. A growing number of states provide general revenue funding for civil legal aid. Arkansas must join this trend especially in light of the high percentage of its citizens who need access to justice. The Commission will continue to do its part by structuring greater volunteerism, assisting the courts to increase efficiencies in processing cases, educating the legal community and entire population about the need for legal aid, and providing tools for those citizens who choose to represent themselves in court. But truly, if the Constitutional promise of justice is to be achieved, the Constitutional entities of Arkansas – the Executive and Legislative branches – must join the courts to pursue this principle so nobly advanced in the Preamble of the Constitution of the United States. Only the Legislature can appropriate the funds necessary to match resources with need and only the Governor can make it law. Both commitments are necessary to achieve a fundamental goal of our Constitutional Republic – the establishment of Justice for All.



*"The first duty of society  
is justice."*

*Alexander Hamilton*

*and establish this*

## Arkansas Access to Justice Commission

### **Will Bond**

State Representative  
Arkansas House of Representatives  
*Arkansas House Appointment*

### **Waymond Brown**

District Court Judge  
Jefferson County  
*Supreme Court Appointment*

### **Angela Duran**

President  
Southern Good Faith Fund  
*Governor Appointment*

### **Charles W. Goldner, Jr.**

Dean  
UALR Bowen School of Law  
*Supreme Court Appointment*

### **Annabelle Clinton Imber**

Associate Justice  
Arkansas Supreme Court  
*Supreme Court Appointment*

### **Frank Sewall**

Corporate Counsel  
Arkansas Blue Cross Blue Shield  
*Arkansas Bar Appointment*

### **Robert F. Thompson**

State Senator  
Arkansas Senate  
*Arkansas Senate Appointment*

### **Bill Brown**

Executive Director (Retired)  
Office of Human Concern  
*Arkansas Bar Appointment*

### **Nate Coulter**

Attorney  
Wilson, Engstrom, Corum & Coulter  
*Arkansas Bar Appointment*

### **Zina Frazier**

Help Line Managing Attorney  
Center for Arkansas Legal Services  
*Governor Appointment*

### **Craig Hannah**

Circuit Court Judge  
Seventeenth Judicial Circuit  
*Supreme Court Appointment*

### **J. Leon Johnson**

Attorney  
J. Leon Johnson, P.A.  
*Arkansas Bar Appointment*

### **Jim Spears**

Circuit Judge  
Twelfth Judicial Circuit  
*Supreme Court Appointment*

### **Danyelle Walker**

Attorney  
Law Office of Danyelle Walker  
*Arkansas Bar Appointment*

## Ex-Officio Members

### **Jean T. Carter**

Executive Director  
*Center for Arkansas Legal Services*

### **Kelly Olson**

Legal Clinic Director  
*UALR Bowen School of Law*

### **Michael W. Mullane**

Legal Clinic Director  
*University of Arkansas Law School*

### **Susie Pointer**

Executive Director  
*IOLTA Foundation*

### **Lee Richardson**

Executive Director  
*Legal Aid of Arkansas*

## Staff

### **Ron Lanoue**

*Secretary*

### **Vincent Morris**

*Technology & Justice Projects Director*

### **Gina Cothorn**

*Research Coordinator*



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