

## **Equal Access to Justice: Action Needed to Close the Justice Gap**

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*If the motto "and justice for all" becomes "and justice for those who can afford it," we threaten the very underpinnings of our social contract.*

-- California Supreme Court Chief Justice Ronald M. George

### **Executive Summary**

Equal access to justice is a bedrock principle of our democracy. Unfortunately, we have allowed that foundation to weaken in recent years by failing to keep up with changes that have profoundly affected our legal system.

There is a dire need for civil legal services for poor Californians – especially underserved groups, such as elderly, disabled, children and people needing assistance with English. In addition to the many challenges in the criminal justice system, by many measures California suffers from an overwhelming "justice gap" between the legal needs of low-income people and the legal help they receive. The unavailability of legal services not only disadvantages people with legal problems, it also burdens the justice system itself and impairs the administration of justice.

Despite significant efforts and important progress, reports by the California Commission on Access to Justice over the past decade have remained remarkably consistent. The Commission has repeatedly reiterated many key findings – most notably that the overwhelming majority of legal needs are not being addressed, with troubling consequences for society and the courts – and recommendations to dramatically increase funding for legal services programs and other measures to close the justice gap.

These findings and recommendations are voiced again in the Commission's latest report, to be presented at this hearing. Among other actions, the Commission recommends: doubling the current state budget appropriation for the Equal Access Fund this year, with further increases in the future; increasing IOLTA revenues by requiring that financial institutions holding client trust funds provide net yields that are comparable to other accounts; funding pilot projects to meet basic legal needs, including full representation where appropriate; funding loan repayment assistance programs for legal services attorneys to allow legal services programs to attract and retain law school graduates despite the low salaries these programs offer; extending court interpreter services to civil cases where parties need assistance with English to communicate with the courts; increasing resources to especially underserved rural areas; and expanding court self-help services.

## **I. The Promise of Liberty and Justice For All**

Former U.S. Supreme Court Justice Lewis Powell, Jr. once noted, "Equal justice under law is not merely a caption on the facade of the Supreme Court building, it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists... that justice should be the same, in substance and availability, without regard to economic status."

As Governor Schwarzenegger noted in his State of the State address last year, access to justice is a bedrock principle of our democracy. The California Commission on Access to Justice has likewise observed that no principle is more essential to a well-functioning democratic society than equal access to justice. As the Commission has commented, true access to justice requires that every community have access to a continuum of legal services. Legal services programs efficiently serve millions of poor clients, and promote an ordered society and the peaceful resolution of disputes. Equally important, legal services programs promote confidence in low-income people that our system of laws can work for them. Sadly, however, we have far to go if we are to honor not just the abstract ideal but the practical reality of the promise to provide "justice for all."

Policy makers increasingly recognize the importance of providing health services to all Californians, regardless of income or the availability of private insurance. Among other reasons, this conclusion reflects the growing appreciation that failure to address health problems at an early stage often leads to more difficult and expensive problems, and the understanding that it may be more costly to rely on hospital emergency rooms to address health problems by those who lack other access to health services.

Similar principles may underlie the provision of legal services. As the Access Commission has noted:

Legal advocacy can help families escape domestic violence, avoid homelessness, obtain needed mental health care, access basic support services, and resolve myriad other problems that threaten the well-being of families and their children. Legal advocacy can play a key role in helping to reduce or avoid poverty-related family dysfunction and child maltreatment, and in helping keep special needs children with their families to reduce reliance on public institutions. Law enforcement personnel and district attorneys have been working closely with legal aid programs across the state because of the potential for reducing domestic violence and other crimes. Thus, legal services programs are having an impact far beyond what is immediately evident, reducing the need for many state services and increasing public trust and confidence in the court system and other branches of government.

(California Commission on Access to Justice, *The Path to Equal Justice*, at 4 (December 2002).)

Of course, there is no provider of last resort in the legal field like ER services in the healthcare delivery system – other than the courts themselves, which are designed to be

neutral decision makers and are therefore poorly suited to provide legal assistance. For the most part, those who cannot afford professional legal assistance simply go without – suffering the loss of important legal rights, income, housing and the like without seeking the involvement of the justice system, or at best attempting self-help "treatment" by appearing in court without legal assistance.

The courts have tried valiantly to respond to the growing number of unrepresented parties, but courts – like hospitals – are founded on the involvement of a skilled professional. While policy makers and experts have proposed many approaches to address the need for wider delivery of health services, it has not been suggested that health care needs be met by relying on patient self-help through medical how-to manuals and rudimentary supplies. Similarly, judicial leaders have recognized that in many cases a party in court should have the assistance of legal counsel.

While there are undoubtedly significant needs in the criminal justice system as well, this paper explores the need for civil legal services, the responses of policymakers, the courts and legal services providers, and the substantial challenges that remain to make good on the promise of "justice for all."

## **II. California Suffers Under An Overwhelming "Justice Gap" In the Availability of Legal Services**

There is a dire need for civil legal services for poor Californians – especially underserved groups, such as elderly, disabled, children and people needing assistance with English. By many measures, California suffers from an overwhelming "justice gap" between the legal needs of low-income people and the legal help they receive.

Legal aid providers are currently able to address only a fraction of the demand for help. Because of insufficient resources, legal services programs can offer assistance in only a few types of cases; many poor and moderate-income Californians do not qualify for services; and most of those who meet the strict eligibility limits and seek assistance regarding problems for which a legal services office provides service are nevertheless turned away, simply for lack of staff. Even those who receive services are frequently under-served with brief advice and consultation, rather than full and fair representation.

Most Eligible People Are Denied Legal Services, Simply For Lack of Resources. For every client served by a legal aid organization in California, nearly two others who reached a legal services organization and met strict eligibility limits were turned down -- because of insufficient resources. The following table shows the figures, broken down by type of legal problem:

*2005 California “Unable to Serve” Data by Type of Legal Problem*

Types of Legal Programs	Unable to Serve	Advice/ Brief Service or Accepted for Representation
Consumer	25848	5538
Education	1734	228
Employment	9240	5766
Family	56142	13356
Juvenile	1422	138
Health	2850	13494
Housing	39072	16170
Income	7788	8376
Individual Rights	7788	24546
Other	18678	3324
<b>Totals</b>	<b>170094</b>	<b>56994</b>

Poor Californians Have Far Less Access to Legal Services Than The General Public.

Expressed in terms of the number of lawyers available, the figures are equally stark. The Access Commission reports that the number of legal aid attorneys available to assist the low-income population is a tiny fraction of the number of private attorneys providing civil legal services to the general population. According to federal poverty data, there was one legal aid attorney in 2006 for every 8,373 poor people in California. By contrast, the number of attorneys providing legal services to the general population is approximately one for every 240 people – nearly 35 times higher. In other words, one-half of one percent of California lawyers is available to serve approximately 17 % of the population.

The Value Of Legal Services Per Poor Person In One Year Is About The Cost Of A State Bar Membership Certificate – Or Half The Filing File Fee For A Single Motion In Court.

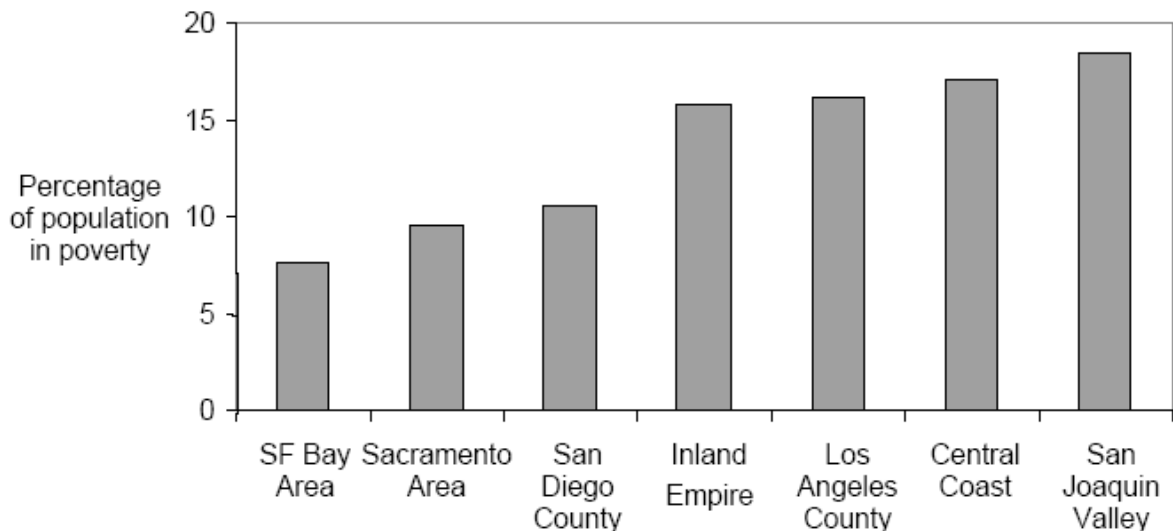
The extent of the problem can also be illustrated by measuring the value of the legal services being provided. As reflected in the following table, total resources for legal services programs in California averaged only a little over \$22.00 per poor person in 2003 (latest available data), and in some regions much lower. By way of comparison, the cost of a bar membership certificate (unframed) from the State Bar is \$25.00. The filing fee for a single motion in a civil matter is \$40.00.

**TOTAL RESOURCES FOR LEGAL SERVICES PROGRAMS IN 2003 BY REGION**

<b>REGION</b>	<b>POVERTY POPULATION 2000</b>	<b>% OF STATE TOTAL</b>	<b>TOTAL LEGAL SERVICES RESOURCES</b>	<b>RESOURCES PER POOR PERSON</b>
Bay Area	888,172	14.01%	38,085,629	42.88
Los Angeles	2,446,862	38.59%	57,651,670	23.56
Orange	405,041	6.39%	5,577,040	13.77
Northern California	682,303	10.78%	12,784,429	18.74
Central CA	764,751	12.06%	10,894,269	14.25
San Diego	503,152	7.94%	10,328,704	20.53
Inland Empire	648,565	10.23%	7,833,197	12.08
<b>TOTAL</b>	<b>6,338,846</b>	<b>100.00%</b>	<b>143,154,938</b>	<b>22.58</b>

The Distribution of Poverty and Legal Services Is Not Well Matched. Compounding the problem is that poverty and legal services resources are not equally distributed. As reflected in the table above, legal services resources are most available in the Bay area, and least available in the inland areas. Conversely, the Public Policy Institute of California reported last year that the Bay area had the lowest poverty rate of California’s major regions at 8 percent (see chart below), while the San Joaquin Valley and other inland area had the highest poverty rates, at or near 18 percent. It should be noted that these figures are based on a national standard that does not take into account the higher cost of living in California.

**Regional Poverty Rates in California**



Negative Consequences For The Administration of Justice. The unavailability of civil legal services not only disadvantages people with legal problems, it also burdens the justice system itself and impairs the administration of justice. This is certainly an issue in

the criminal context as well, but in the civil system the Judicial Council reports that California courts are facing an ever increasing number of parties who go to court without legal counsel, largely because they cannot afford representation. Unrepresented litigants typically are unfamiliar with court procedures and forms as well as with their rights and obligations, which leaves them disadvantaged in court and consumes significant court resources. By requiring greater judicial resources, unrepresented parties also exacerbate the shortage of judicial officers.

Courts are designed to operate with trained legal counsel representing the parties. Our legal system is based on the principle that justice is best done when adversarial parties are represented by knowledgeable advocates who argue the strengths and weaknesses of a case before a neutral fact-finder. The legal system cannot work effectively and efficiently when parties lack even basic knowledge about their rights and the legal process.

As the California Commission on Access to Justice has observed, a lack of representation detracts from public confidence in the justice system when the financial situation of a party is more likely than the merits of an issue to determine the outcome. Respect for the law depends upon public confidence in the accessibility of the justice system. Whether disputes are brought to the legal system for resolution or decided in less desirable ways depends in part on whether the courts are available to all who face legal problems. Court opinion surveys show that public trust and confidence are negatively affected by impressions of procedural unfairness, and that the opportunity for people to be heard in a meaningful way is the biggest impediment to improved sense of procedural fairness. Disturbingly, opinion surveys show that more than two-thirds of Californians believe low-income people usually receive worse outcomes in court than others. In addition, parties that appear in court without the assistance of counsel believe they are at a disadvantage and that they would have been treated better (procedural fairness) and had a better outcome (substantive fairness) if they were represented by a lawyer. Respect for a system of laws is not encouraged if most people perceive, rightly or wrongly, that justice is only for the wealthy.

### **III. Numerous Reports By The California Commission On Access To Justice Over The Past Decade Document The Need For Action**

Inspired by Chief Justice Ronald George, the California Commission on Access to Justice was established in 1997. Composed of 24 members reflecting a cross-section of judges, lawyers, academic, business and community leaders and other experts on the delivery of legal services and the administration of justice, the Access Commission has led the effort to document the need for equal access, and to make the courts and legal services more available to the poor.

Over the past ten years, the Commission has issued a series of reports and recommendations, and has helped to advocate for and shepard the development of new policy responses to improve access equality. Unfortunately, despite significant efforts and important progress, these reports have remained remarkably consistent during this

period, with the Commission repeatedly reiterating many key findings – most notably that the overwhelming majority of legal needs are not being addressed, with troubling consequences for society and the courts – and recommendations to dramatically increase funding for legal services programs and other measures to close the justice gap.

1996 Needs Study. In 1996, a precursor to the Access Commission published the results of its three-year study in a report entitled *And Justice For All: Fulfilling the Promise of Access to Civil Justice in California*. The report concluded among other findings:

- **The Legal Needs of Three Out of Four Poor Californians Are Not Being Met.** The legal needs of approximately three-quarters of all poor people are not being met at all. The legal needs of the other one-quarter are sometimes met only partially and the number of poor people in California continues to increase at a pace faster than that of the state’s overall population.
- **Pro Bono Services and Financial Contributions Can and Should Be Increased But Cannot Alone Meet California’s Unmet Legal Needs.** California lawyers perform a substantial amount of pro bono work and it is reasonable to expect more lawyers to provide representation or financial contributions to legal services programs in the future; nonetheless, the private bar alone cannot approach meeting all the unmet legal needs of the poor.
- **Funding for Legal Services Must Be Increased Dramatically.** An estimated \$250 to \$300 million (in 1993 dollars) was needed to fill the gap between the 1993 level of funding (about \$100 million) and the amount required to provide justice to almost six million poor people then living in California.
- **California Has Just As Great a Responsibility to Ensure Adequate Counsel Is Provided to All As It Does to Supply Judges and Courthouses.** Access to justice is a fundamental and essential right in a democratic society. Access to justice requires access to lawyers. The governments of most industrial democracies have established a legal right to free assistance of lawyers in civil cases for low-income citizens, and many industrialized democracies fund legal representation for low-income citizens in civil cases at a much higher level than does the United States or California.
- **Near-Poor and Moderate-Income Californians Also Require Increased Access to Civil Legal Services.** While almost two million California households (representing around five million people) lived below 125% of the poverty line in 1990, another 2.2 million households (representing over six million people) lived just above this level, struggling to maintain a minimum standard of living. Many of these families are unable to afford legal services for pressing needs without some form of legal assistance. And, those who try to represent themselves are very likely to lose, even when the evidence indicates they should prevail.

- **Self-Help Services Should Be Increased Until Adequate Legal Representation Can Be Provided.** As an interim measure until adequate legal representation can be provided to all who need it, programs that assist litigants in representing themselves in court proceedings should be developed and enhanced, although such programs can never provide equal access to justice.

2002 Assessment of Needs and Responses. After five years of study following the issuance of the 1996 report, the Commission on Access to Justice published a report in 2002, entitled *The Path to Equal Justice*. While noting that California had begun to take the first steps toward addressing justice inequality – among them the Legislature’s establishment of the Equal Access Fund in the 2000-2001 state budget, establishment of court self-help services for unrepresented parties, and development of more cost-effective systems for delivering legal services – the Commission reported that low-income Californians continue to face dismal circumstances, and the number of people in poverty (and thus the number of potential legal aid clients) had jumped 30 percent.

The Commission reported that the justice gap in 2000 had begun to shrink, from \$440 million in 1996 to \$384 million in 2000. Yet, even with the increased funding and the diminishing access gap, the Commission found that just 28 percent of the legal needs of the state’s poor and lower-income residents were being addressed at the time of the report. Some of the new funding, the report found, simply compensated for a loss in federal funding and state trust fund (IOLTA) support. In addition, California continued to lag far behind other industrial states in its funding of legal services for the poor.

Like the 1996 report, the Commission’s 2002 report recommended the following steps:

- **Additional Funding Is Needed.** During the next five years, the Equal Access Fund must be dramatically enhanced, and total resources for legal services for California’s poor should be increased so that at least 50 percent of the legal needs of the poor are being met.
- **Financial and Pro Bono Contributions by Legal Profession Should Be Increased.** Financial and pro bono contributions from attorneys and law firms must increase. While achieving accessible justice is a societal responsibility, and the goal of increasing state funding reflects that assumption, the legal profession must also fulfill its responsibility for playing a lead role in the effort to improve the justice system.
- **Self-Help Should Be Expanded and Improved.** Assistance for unrepresented litigants must continue to expand and be improved and access to lawyers must be available when necessary to ensure equal justice. Sophisticated systems for sorting cases must be developed to distinguish between those that require lawyers and those where unrepresented people have an equal chance if given some assistance.



- **Language Services Are Essential to Access.** Litigants with limited English proficiency must receive assistance in order to fully understand and participate in the judicial process. In many areas of the state, a third or more of all litigants may lack fluency in English. Particularly when they are self-represented, they cannot hope for justice without the assistance of trained interpreters and other services that can help them understand and present their cases, and courts must have the ability to provide adequate certified interpreters.
- **Urban/Rural Equity.** A statewide plan must be completed and implemented to eliminate disparities in legal services resources between urban and rural areas. In part because of California's heavy dependence on local private funding, legal services are unequally distributed across the state. While no area has adequate funding, many rural areas remain grossly underfunded.

2007 Action Plan. At the Committee's hearing today, the Commission is scheduled to present its latest report and recommendations, finding that the need for civil legal assistance continues to far exceed the level of resources provided.

Specifically, the Commission reports that as of 2005 the current "justice gap" figure is \$394.1 million. While California has made some important gains in terms of overall resources, the Commission finds that legal aid programs are still not able to provide even a minimal level of legal advice and assistance for approximately two-thirds of the legal needs of California's poor. Even for the one-third of the legal need that is being addressed, it is often addressed with brief services and advice, rather than with the full representation that low-income Californians often need and deserve. Indeed, full representation by an attorney continues to be beyond the reach of many, and arguably, even further beyond reach than in 1994, when the Commission began looking at legal needs, as the cost of living and legal fees have continued to increase disproportionately to any increase in incomes. As a result, the Commission reports, thousands of Californians who cannot obtain legal services are prevented from having meaningful access to justice, and, consequently, too often lose their homes, their possessions, their livelihoods, even their dignity. Access to justice is not meaningful, the Commission concludes, when there remain such inadequate resources to meet the need.

Among other recommendations, the Commission is expected to call for:

- **Substantial Additional State Funding.** In order to achieve the goal of closing the justice gap, the state government must take the lead and increase the Equal Access Fund (EAF) appropriation by at least \$10 million for FY2007-2008 – doubling the current appropriation. Each year thereafter, the Access to Justice Commission, the State Bar, the Judicial Council and the legal services community should work with the Legislature and the Governor to establish the necessary increment to the EAF so as to determine how best to continue making progress toward filling the justice gap by 2016.
- **Increased IOLTA Revenues.** By requiring that financial institutions holding client trust funds provide net yields on large IOLTA accounts that are at least as

good as the highest yields provided on non-IOLTA accounts with comparable characteristics, it is believed that significant additional funds may be generated to support legal services for poor and disadvantaged Californians, as has been the experience in a number of other states.

- **Fund Pilot Projects To Provide A Continuum Of Service, Including Full Representation, For High Priority Needs.** The Commission recommends funding pilot projects to implement a coordinated continuum of responses, including full representation where appropriate, to specific, basic legal needs faced by individuals with limited or no access to legal assistance in those communities. The pilot projects should be designed so as to enable the gathering of data and information California needs to determine the costs and infrastructure requirements involved in fully meeting the legal needs of the poor.
- **State Funding To Implement Loan Repayment Assistance Programs (LRAP) For Legal Services Attorneys.** Legal services programs report many difficulties recruiting law school graduates; for those who do make the initial decision to work at legal aid, retention becomes similarly challenging. Law school graduates now face unprecedented amounts of student loan debt upon graduation, often facing a debt totaling over \$80,000 (translating into more than \$1,000 per month in loan payments). This level of debt makes it practically impossible for legal services organizations, only able to offer salaries well below those offered by other public sector employers and at a fraction of what private firms provide, to attract and retain attorneys to provide legal services to low-income populations. It is critical that state funding be allocated to allow the California Student Aid Commission to adequately fund the existing Public Interest Attorney Loan Repayment Program authorized by AB 935 (Hertzberg) of 2001.
- **Use Cy Pres Funds To Support Legal Services.** Under *cy pres* doctrine, courts may award unclaimed, residual funds from class action lawsuits to the “next best” use. Such awards are often made pursuant to the stipulation or recommendation of, or through settlement agreement between, the plaintiffs and defendants. Existing law in California specifically provides that *cy pres* funds may be paid to organizations that provide civil legal services to the indigent, regardless of the areas of law at issue in the case. The millions of dollars that already are distributed through *cy pres*, is an indicator of this largely untapped source of support for the legal aid community.
- **Increase Funding For Legal Services To Seniors.** Funding levels for the delivery of senior legal services in California are inadequate. In 2001, AB 830, the Senior Legal Services bill, was signed into law, requiring a task force to study and make recommendations to enhance the delivery of legal services to seniors in California. Among its many findings, the Task Force report sets forth several specific recommendations for enhanced statewide funding, including a request for increased appropriations to enable the California Department on Aging to support and fund legal services for seniors in California.

- **Increasing and Supporting Pro Bono.** To increase the depth and breadth of pro bono involvement, further steps should be taken to promote statewide support for local and regional efforts to encourage more pro bono; developing ongoing judicial support for pro bono; establishing the principles of ABA Model Rule 6.1 to encourage attorneys to do pro bono work; and adopting ABA Model Rule 6.5 to facilitate attorney participation in advice and counsel clinics.
- **Increasing Resources in Rural Areas.** Although no area of the state has enough resources to fully serve all who need legal services, rural communities are particularly stretched for resources. To increase resources in rural areas we should: establish minimum access guidelines to be used as baseline for funding considerations and prioritize funding of Loan Repayment Assistance Program to encourage lawyers to practice in rural areas.

#### **IV. Court Responses to Increased Numbers of Pro Se Parties**

The Judicial Council reports that “California’s courts are facing an ever increasing number of litigants who go to court without legal counsel largely because they cannot afford representation. Self-represented litigants typically are unfamiliar with court procedures and forms as well as with their rights and obligations, which leaves them disadvantaged in court and consumes significant court resources. Accordingly, the Judicial Council has made access to the courts for self-represented litigants one of its top priorities.” (Judicial Council, Fact Sheet, Programs for Self-Represented Litigants (2/05).)

The Judicial Council reports that the number of unrepresented litigants has expanded greatly in recent years. Although hard information on the number of pro se or “pro per” parties may not be available, the Judicial Council indicates that over 4.3 million of California’s court users are unrepresented, and estimates the number of petitioners bringing matters without legal representation in the following types of cases:

- Unlawful Detainer – 34 % (defendants 90 %)
- Family Law – 67 % (largest counties 72 %) – higher at time of marital dissolution
- Domestic violence restraining order – over 90 %
- Child support – 85 %
- Paternity – 96%
- Probate – 22 %
- General Civil – 16%

Commenters have noted that the dramatic increase in the number of parties that appear in court without a lawyer directly followed significant restrictions in federal funding for legal services organizations imposed by Congress in 1995. In effect, the policies of the federal government have simply shifted the cost of responding to the legal needs of poor people from federally-funded legal services programs to state-funded court and related legal services, and of course also put pressure on other social programs.

In 2001, the Judicial Council established the Task Force on Self-Represented Litigants to coordinate the statewide response to the needs of litigants who represent themselves in court. The Task Force has found a “unity of interest between the courts and the public with respect to assistance for self-represented litigants. Lack of legal assistance is clearly an enormous barrier for the public. It also creates a structural gap for courts which are designed to work with litigants who are represented by attorneys. Managing cases involving self-represented litigants is a daily business event at every level of court operations – from filing through calendaring, records management, and courtroom hearings.” (Statewide Action Plan for Serving Self- Represented Litigants, at 1.)

The task force has reported the following key findings:

- Court-based staffed self-help centers, supervised by attorneys, are the optimum way for courts to facilitate the timely and cost-effective processing of cases involving self represented litigants, to increase access to the courts and improve delivery of justice to the public.
- It is imperative for the efficient operation of today’s courts that well-designed strategies to serve self-represented litigants, and to effectively manage their cases at all stages, are incorporated and budgeted as core court functions.
- Partnerships between the courts and other governmental and community-based legal and social service organizations are critical to providing the comprehensive field of services required for success.

In 1997, funding was provided to create an Office of the Family Law Facilitator in each of California’s 58 counties, providing legal assistance with child support and paternity to self-represented litigants. Since then, model pilot projects in family law and other civil issues have been funded in a few California counties and some courts have committed resources to supplement many of these programs. Some counties have been able to expand on the Facilitator program, and a few have even expanded services beyond family law. These centers are staffed by court personnel or by legal aid staff working in partnership with the courts, and provide invaluable service to modest-means court users, offering one-on-one assistance as well as workshops and other services. In addition, courts and legal services agencies have formed partnerships to meet the needs of self-represented litigants. Particularly notable are the partnerships funded through the Equal Access Fund created by the Legislature, and administered by the Judicial Council, to provide \$10 million to IOLTA-eligible legal services programs, 10 percent of which are for partnership projects.

Given the success of these self-help centers, the judicial branch has expanded programs for self-represented litigants by making self-help services one of the top three priorities for funding in 2006, allocating \$8.7 million to allow courts to start or expand self-help centers. The need identified by local courts for ongoing funding for self-help services throughout the state, however, is more than \$44 million.

In addition to self-help centers, legal aid agencies and the Judicial Council have created a variety of instructional materials available on the Web, at the local courthouse or bar association, local law libraries, and at community legal service providers. These materials provide information to all Californians, regardless of income, and are therefore one of the primary sources – and often the sole source – of legal information and education for our modest-means population.

Together with the simplification of court procedures, court rules, and court forms undertaken by the Judicial Council and local courts, county law libraries and court-based self-help centers are helping moderate-income Californians overcome some of the barriers to access to justice. One of the most challenging problems faced by self-help centers, however, is that for those individuals who are not good candidates for self-representation, there is often nowhere to refer them for actual representation.

#### **V. Language Barriers Continue To Exclude Millions of Californians From Court Services**

Millions of Californians Needing Assistance With English Are Among Those Most At Risk Of Exclusion From Court Services. For Californians who are not proficient in English, the prospect of navigating the legal system is daunting, especially for the growing number of parties in family court and other cases who do not have access to legal services and therefore have no choice but to represent themselves in court – a virtually impossible task for people who are unable to understand the proceedings.

The California Commission on Access to Justice reported in 2002 that people with limited English proficiency are among those most likely to need assistance in accessing the courts, and least likely to receive it. In its 2002 report on access to justice in California, *The Path to Equal Justice*, the Commission found that 72 percent of the legal needs of low-income families go unaddressed.

In 2005, the Commission issued a report, *Language Barriers to Justice in California*, examining the scope and impact of language barriers in California’s justice system and offering suggestions for ways to improve services for people with limited English proficiency. The Commission pointed out: “Unless every Californian can fully understand and participate in judicial proceedings affecting his or her legal rights, our courts cannot serve their intended purpose and our democracy cannot keep one of its most important promises.”

Californians face a severe unmet need for language assistance in the courts, the Commission found. Over one quarter of Californians (roughly 8.8 million people) are foreign born, and roughly 20 percent of Californians (almost 7 million people) speak English less than “very well” – the minimum realistic threshold for meaningful participation in a judicial proceeding.

Failure to Provide Interpreters Raises Important Legal and Policy Issues. Although the starkest consequence of linguistic barriers to the courts is that justice is denied, the

Commission reports, these barriers also impact the efficiency of the courts. Inadequate assistance for litigants with limited English proficiency affects the court's ability to function properly, causing delays in proceedings, inappropriate defaults, and faulty interpretation that can ultimately subvert justice. The inability to accommodate the language needs of litigants also impairs trust and confidence in the judicial system.

Reliance on untrained interpreters, such as family members or children, can lead to faulty translations and threaten the court's ability to ensure justice. Court interpretation is extremely difficult and takes a unique combination of skills, experience, and training. Apart from the possibility of fraud, unqualified interpreters often fail to accurately and comprehensively convey questions and distort testimony by omitting or adding information, or by stylistically altering the tone and intent of the speaker, thereby preventing courts from hearing the testimony properly. These problems compromise the fact-finding process and can result in genuine injustice.

The Legislature has previously recognized that the number of non-English speaking persons in California is increasing, and recognized the need to provide equal justice under the law to all California residents, including specifically their special needs in relation to the judicial and administrative law system. The Legislature has likewise recognized that the effective maintenance of a democratic society depends on the right and ability of its residents to communicate with their government and the right and ability of the government to communicate with them.

The Commission's 2005 report notes that a constitutional right to a state-funded interpreter in criminal proceedings has long been recognized by the courts; yet, in most civil proceedings – even those affecting fundamental rights – California has not recognized an explicit right to an interpreter. Various state and federal laws arguably require that language minorities receive the same services as persons who speak English. However, the right to an interpreter has been statutorily recognized in only a handful of civil matters, including those involving, domestic violence, parental rights, dissolution of marriage or legal separations involving a protective order, and court-related medical examinations. Unfortunately, even for most of these proceedings, this statutory “right” is illusory because compliance is required only if adequate funds are available from the federal government or from sources other than the state.

Barriers to access to justice associated with language difficulties pose a significant threat to the judicial system. The Judicial Council's 2005 Public Trust and Confidence Survey indicates that a substantial majority of Californians (regardless of English proficiency) believe that non-English speakers who are able to access the courts fare less well than English speakers. Over 65 percent of respondents believe that non-English speaking litigants receive worse results in court proceedings than other litigants.

A significant erosion of public trust and confidence in the fairness of the courts, either by litigants with limited-English proficiency or by the public as a whole, threatens the future legitimacy of the legal system. Anecdotal information and surveys, including the recent Judicial Council Trust and Confidence Survey, show that many limited-English speakers

simply forego their rights rather than attempt to overcome this challenge. As a result, in civil judicial proceedings that most affect peoples' basic needs, they are unable to effectively present their cases or protect their legal rights. These surveys likewise show agreement among court users and judicial branch that more interpreters are needed, and that the lack of interpreters negatively impacts perceptions of fairness and may impact substantive fairness as well. Given that courts are often the only source of protection against such abuses as consumer fraud, employment and housing discrimination and others, state and federal laws intended for the protection of vulnerable groups against these abuses can be rendered meaningless for limited-English speakers.

The courts have made significant efforts to assist litigants with limited English proficiency, including steps to increase the number of certified and registered interpreters and to provide interpreters in civil cases where resources are available. Nevertheless, court proceedings are required to be conducted in English, and most crucial court forms and documents are available only in English, while the number of skilled interpreters has actually declined over the past decade and the number of persons requiring interpreter services has increased. Some commenters believe that the rate of compensation for state court interpreters in comparison to other employers may be depressing the availability of qualified interpreters.

The Legislature's Recent Efforts To Provide Civil Interpreters. The Legislature made serious efforts to address these needs last year. Building on the statement in the Governor's proposed 2006-2007 budget acknowledging the importance of providing professional interpreters in civil cases, the Assembly proposed and, with the concurrence of the Senate, the Legislature provided \$10 million in the budget to fund civil interpreters. However, the Governor deleted this funding stating, although "it is essential to provide non-English speaking litigants with interpreters in order to provide meaningful access to our justice system," the need for civil interpreters should be funded from existing judicial resources.

The Legislature then attempted to establish a prospective mechanism for the provision of court-paid certified interpreters in civil proceedings, conditioned on the availability of future funds, by adopting AB 2302 (Judiciary). Although this bill enjoyed bipartisan support, it was vetoed by the Governor.

New Access Commission Report Documents Continuing Need For Court Interpreters. The Access Commission's 2007 report states that civil litigants who are unable because of language proficiency to fully understand and participate in the proceedings should have the right to a qualified interpreter at all stages of the proceedings irrespective of financial means. The Commission recommends the Judicial Council should work with the Governor and the Legislature to ensure that adequate funding is provided to make this a reality. The Commission notes that implementation of this recommendation would likely be incremental as funding for all civil interpreter needs will become available only over time. "However, it is critical that access to court certified interpreters be recognized as a universal right in our judicial system." As an immediate step toward this goal at a time when resources are limited, the Commission recommends establishment of pilot projects

for court interpreters in civil cases involving significant legal rights to allow a selected sample of courts to assess the need for interpreters in civil cases, examine ways of maximizing the use of existing interpreters through calendar management, and determine what it would take in terms of both funding and interpreters to provide adequate interpretation services. This approach will help ensure that funds are expended and available interpreters used in the most efficient and effective manner to achieve the goal of providing qualified interpreters to meet the need.