

2014 State Plan

for the Provision of
Civil Legal Services to
Low Income
New Mexicans

The Commission on Access to Justice
of the
Supreme Court of the State of New Mexico

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I. PREFACE

New Mexico's legal services planning efforts began in 1995 when the New Mexico State Bar ("State Bar") asked a group of stakeholders to attend a seminar on the issues facing this state's civil legal services system. Participants at the seminar recognized that access to justice is the business of more than civil legal services providers and wanted to ensure that low-income persons would be able to have meaningful access to the civil legal system. The State Bar created a task force to address these issues. The task force proposed a plan to provide all eligible people with appropriate legal services. In 1997, the State Bar Board of Bar Commissioners approved the plan and created the Legal Services and Programs Committee ("LSP Committee") to replace the task force. The LSP Committee continued the state planning efforts, refined the definitions of essential services, and studied how best to deliver these essential services.

In 2001, the legislature passed the Civil Legal Services Act, which created the Civil Legal Services Fund ("CLS Fund") and the Civil Legal Services Commission ("CLSC").¹ At the time that it was created, the CLS Fund collected money from a surcharge on filing fees in district, metro, and magistrate courts which was then contracted to eligible legal services programs by the CLSC. Although welcomed with enthusiasm by the legal services community and its supporters, this influx of state funding fell far short of meeting the legal needs of low income New Mexicans. In recognition of this unmet need, the Supreme Court of the State of New Mexico ("Supreme Court") created the Commission on Access to Justice (the "Commission") in May 2004.

The Commission is a statewide body dedicated to expanding and improving civil legal assistance in New Mexico (please refer to Appendix A). Since September of 2004, the Commission has worked on several fronts to improve access to justice for low-income New Mexicans. The Commission conducted hearings around the state to hear from stakeholders, members of the public, including low-income New Mexicans about the state of the civil legal service delivery system. It assembled its findings in a report submitted to the Supreme Court in April 2006. The Supreme Court

¹ NMSA 1978 § 34-14-1, et seq. (2001)

subsequently entered an Order adopting the recommendations proposed in the Commission's Report.

Since then, the Commission, members of the court, legislators, the State Bar, legal services providers, and others have been working to implement the Supreme Court's Order. This unprecedented collaboration among diverse stakeholders backed by the authority and full support of the Supreme Court has resulted in an impressive range of initiatives and accomplishments. For example:

STATEWIDE PRO BONO EFFORTS: In March, 2006, the Commission submitted a comprehensive report entitled "The New Mexico Ten Step Plan for Improving Access to Justice" (the "Ten Step Plan") to the Supreme Court, and the Court immediately acted to adopt the plan in April of that year. The Ten Step Plan outlined several key components of New Mexico's strategy for improving access to justice. Perhaps the most important aspect of the Ten Step Plan was its recognition of the judiciary's critical role in a successful effort to increase access to justice. The Commission worked with the Supreme Court to implement the Ten Step Plan, resulting in a series of groundbreaking steps: mandatory pro bono reporting, the establishment of pro bono committees in each of the thirteen judicial districts, creation of the position of Statewide Pro Bono Coordinator housed at the New Mexico State Bar, and the establishment of the Volunteer Attorney Pool in the 2nd Judicial District. As a consequence of these steps, pro bono service around the state has increased dramatically, as have cash donations in lieu of pro bono service.

The Commission has actively supported the efforts of local pro bono committees throughout the state. Most significantly, the Commission has promoted cooperative arrangements between New Mexico Legal Aid and Law Access New Mexico, which make their own professional liability insurance coverage available to attorneys who volunteer their services on local pro bono committee projects. With this support, volunteer attorneys have provided pro bono services to thousands of low-income New Mexicans.

SELF-REPRESENTED LITIGANTS (SRLs): In May 2007, the Commission submitted the Report of the Self-Represented Working Group to the Supreme Court. The Report made a series of recommendations including:

establishment of court self-help centers in each judicial district; creation at the Administrative Office of the Courts (“AOC”) of a staff attorney position to assist judicial districts to set-up and run the self-help centers (along with establishing consistent standards, policies and practices of court staff delivering forms and information to SRLs); and the adoption of a proposed rule to define the role of court staff that work with SRLs. The position at the AOC was created, and the SRL staff attorney has helped several judicial districts create new self-help centers or designate specific staff to deliver self-help services. In fact, an informal group of self-help and ADR court staff has now formed to exchange ideas and experiences for best practices. The Commission has also worked closely with the Supreme Court to make the rule changes necessary to streamline and simplify the summons form and the free process application procedure for Self-Represented Litigants. The Commission continues its pro-active support for standardized plain-language forms for the unrepresented public, in particular web-based, interactive forms.

Limited License Rule: The Commission proposed and the Supreme Court approved amendments to the limited license rules, Rules 15-301.1 and 15-301.2 NMRA that broaden the ability of legal service providers to recruit inactive members of the State Bar of New Mexico and out of state lawyers to work for legal services providers. The revisions expanded the pool of those eligible for the license and removed the limitation on the number of years one could hold such a license.

IOLTA: Recognizing the effect of dropping interest rates on IOLTA funds, the Commission recommended and the Supreme Court approved rule changes that establish mandatory attorney participation in IOLTA at financial institutions paying comparable interest rates on accounts. The Commission’s commitment to IOLTA accounts remains steadfast as it appeals to the FDIC to include IOLTA accounts within the category of noninterest accounts protected by unlimited deposit insurance.

Pro Hac Vice: Since 2005, the State Bar and the Commission have distributed to legal services providers grants in excess of \$1,000,000 from monies collected from non-admitted attorneys appearing in civil cases in state Courts.

Cy Pres Residual Funds: The Commission worked closely with the Supreme Court to amend current rules of civil procedure to allow courts to direct residuary funds remaining from class action settlements and other court-administered funds to support legal services programs in New Mexico. The rule amendment became effective in 2011. Rule 1-023(G) NMRA.

The State Plan: In 2007, the Commission submitted and the Supreme Court adopted the “State Plan for Providing Civil Legal Services to Low-Income New Mexicans” (the “2007 State Plan”). The 2007 State Plan pulled together the Ten Step Plan, the Report of the Self-Represented Working Group, and new sections including, most notably, a section that described the existing system structure and made recommendations on how providers could begin to better coordinate their services.

The primary accomplishment of the 2007 State Plan was to bring the legal services providers together for the first time to discuss how they would work in a more coordinated fashion. Almost from the outset it was clear that much work needed to be done to create trust and openness between the providers. By the time the 2007 State Plan was completed and adopted by the Supreme Court, the providers had spent many hours together resulting in a significant increase in cooperation, partnership and information-sharing.

In 2010, the Commission asked the Systems Planning Working Group (SPWG) to review progress on implementation of the 2007 State Plan. This effort evolved into a significant re-write of the plan. An interim draft was approved by the Court in 2013 pending completion of a statewide needs assessment. After the 2014 Needs Assessment report was submitted in the fall of 2014, the SPWG revised the interim draft incorporating both the recommendations of the Needs Assessment, and results of the January 2014 World Café discussion. Once again, the writing of a state plan became a venue for providers to improve their ability to work together. As a result of the process of writing and rewriting the state plan, as well as other initiatives such as the Executive Directors’ Forum and the Collaboration Initiative funded by the State Bar, the providers are coordinating their services more closely and collaborating on a variety of fronts.

Conclusion: The Commission recognizes its success over the years would not be possible without the commitment of judges, lawyers, legal services

providers, courts, and court staff to the goal of increasing access to justice for low-income New Mexicans. This 2014 State Plan for the Provision of Civil Legal Services to Low Income New Mexicans, dated January 2014 (the “2014 State Plan”) does more than just update the original State Plan; it challenges all stakeholders to rededicate themselves to the Supreme Court’s Access to Justice Initiative. The 2014 State Plan suggests that, even in a period of increased instability and uncertainty in federal funding, coordination and collaboration by all stakeholders at all levels of the state system, can propel us to our goal: meaningful access to the civil legal system for all low-income New Mexicans.

II. THE SYSTEM PLANNING WORKING GROUP

The following members and former members of the Systems Planning Working Group made significant contributions to the drafting of this plan.

Liz McGrath	System Planning Working Group Chair, Pegasus Legal Services for Children
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Angelica Anaya Allen	United South Broadway
John Arango	ATJ Commissioner, Algodones Associates
Rosalie Chavez	New Mexico Legal Aid
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Michelle Giger	Center for Civic Values
Pamelya Herndon	Southwest Women's Law Center
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Richard Spinello	State Bar of New Mexico

The System Planning working group also acknowledges the invaluable assistance of a variety of legal services providers, members of the judiciary, private attorneys, and other representatives of the private bar who provided input into the 2014 State Plan.

III. EXECUTIVE SUMMARY

The document that follows, the 2014 State Plan is aspirational. The 2014 State Plan sets goals which, if pursued, will best serve New Mexico's poor. The 2014 State Plan will require that funders, the Commission, the Supreme Court, the CLSC, the State Bar and all legal services providers set specific objectives and work together to find ways to implement the plan. The end goal is to maximize the limited resources, both human and financial, necessary to meet the civil legal needs of New Mexico's poor.

Below is a brief description of each section of the 2014 State Plan.

Recommendations: This section of the 2014 State Plan lists specific recommendations pulled from the body of the text for emphasis and ease of reference. Readers of this executive summary are strongly encouraged to read the recommendations in conjunction with the executive summary.

Service Delivery Methods: Through the years, New Mexico's state plan has focused primarily on how to best serve the low income community through individual and direct legal service in which the advocate handles a specific legal issue for a specific client. A truly coordinated system will also be able to address client' legal needs on a broader scale and in a strategic manner. A coordinated system is essential to ensuring that the most effective strategies are used to meet the legal needs of low-income communities within available resources.

The 2014 State Plan sees systemic advocacy as a necessary component of the civil legal services system. Put plainly, no one delivery method is better than another. All are essential to a coordinated system.

The 2014 State Plan recommends a full range of service delivery methods in an attempt to provide the most appropriate legal services for New Mexico's low-income population. Legal services providers should not choose a service delivery method based solely on the number of persons able to be served. State funders who require targeted numbers of people served should take into account that the most appropriate service delivery method may not generate the highest number of people served.

This section describes the full range of service delivery methods: Legal Advice, Brief Service Extended Legal Representation, Negotiation and

Alternative Dispute Resolution, Systemic Advocacy, Provision of Legal Information, Outreach and Community Legal Education Assistance to Self-Represented Litigants, Group Representation, Pro Bono Assistance, and Community Economic Development.

Priority Client Types and Substantive Legal Areas

The legal services system should provide an appropriate legal service to every low-income person at or below 200% of the federal poverty guidelines and residing in the state of New Mexico regardless of race color, creed, gender, sexual orientation, religious affiliation, nationality or state of personal freedom (that is, whether institutionalized/incarcerated or not).

When planning for their agencies, legal services providers should identify client types and substantive law areas to be given priority. These priority areas are not intended to be exclusive of other client types or substantive law areas in which the need for civil legal services has been demonstrated.

Priority Client Types: Client types identified for priority status statewide are those who are unable to have meaningful access to the legal services system, including but not limited to language or cultural barriers, age, limited education, mental or physical limitations, and the power difference between the parties (e.g. the other party is represented).

Substantive Legal Areas: Needs assessments conducted in NM and other states consistently point to certain areas of substantive law where the needs are most critical. These core areas should be given priority in funding and resource allocation. Representation for these core substantive law areas should be geographically distributed so that representation is available in every judicial district throughout the state. The five areas are:

- Housing
- Consumer
- Family law
- Employment
- Government benefits/health

Other areas worthy of resource allocation include:

- Protective services
- Elder issues
- Education
- Disability issues
- Water and land use
- Immigration and migrant workers
- Native American issues

Funders should refer to the full 2014 State Plan when making funding decisions.

Rural Services: This section has been substantially expanded and makes the point that the 2007 State Plan’s focus on bricks and mortar law offices has been a strategy that has not successfully met the needs of our rural population, as there is insufficient funding to provide the daily physical presence of legal services with the funding available for the provision of such services. Thus, in order to best serve their rural clients – especially in light of persistently inadequate funding – legal services providers will need to employ both the convenience and access advances that electronic technology offers together with providing face to face service in innovative ways.

Many of the alternatives to face to face approaches for delivering legal services are already utilized by some providers, but could be employed more broadly in order to better serve those clients who are not currently served by traditional offices. One such approach already significantly implemented is the statewide telephonic legal service offered through Law Access New Mexico. Another approach recommended by the American Bar Association Standards for the Provision of Legal Aid is for providers to establish and maintain contact with client and community groups and social services providers who are often best informed about the serious issues affecting rural communities. This will enhance the providers’ ability to

respond effectively to their clients' most pressing needs. Such alternative and cooperative approaches include the following.

- Coordinated outreach activities
- Legal clinics
- Para-professionals or other non-attorney staff
- Partnering with law schools
- Sharing resources with other agencies
- Telephonic legal services
- Traveling attorneys who are based in a traditional office, but who periodically provide legal services outside of the office as well
- Traveling offices
- Volunteer lawyers
- Agreements with outside counsel
- Cooperation with organizations that work closely with those who live in remote locations.

Also included in this section are performance indicators to help the system measure its progress towards the goals outlined therein. In order for these performance indicators to be meaningful, quantitative goals and benchmarks must be developed.

Legal Services Providers: The professionally staffed civil legal services system consists of three main components: a) an entry/intake system, b) broad based professionally staffed civil legal services providers, and c) specialized legal services providers. Each component may be responsible for one or more of the service delivery methods reviewed in this plan.

The 2014 State Plan supports an entry/intake system that will provide the majority of low income New Mexicans a primary point of entry to gather basic contact information, ascertain the nature of the civil legal issue,

identify the legal need, and then direct the client to the appropriate legal service.

Under this plan, one agency – currently Law Access New Mexico (“LANM”) – is identified as the primary entry/intake provider responsible for accurately identifying the legal needs and referring for the most appropriate legal service. In order to reach the established goal of only two contacts between the client and the appropriate legal services service, it will be critical that the lead intake agency fully understands what types of client/applicants and legal issues can be accepted by the other legal services providers. Other legal services providers should strive to encourage all applicants for legal services to apply for services through the statewide entry/intake program. It should be the goal of all legal services providers to seek ways to minimize their general intake, in favor of the lead agency as outlined above. For certain case types or client types it may be preferable that the client/applicant access the system through an agency other than the primary entry/intake agency.

All providers, and especially the primary entry-intake provider, should be involved in efforts to develop systems for on-line intake, self-help and legal information. Legal services providers should undertake an effective marketing and outreach campaign to educate the client population and the general public about how to access services and work together to address barriers to legal services.

Also included in this are performance indicators to help the system measure its progress towards the goals outlined therein. In order for these performance indicators to be meaningful, quantitative goals and benchmarks must be developed.

Broad Based, Professionally Staffed Civil Legal Services Providers: The legal services system structure in New Mexico includes a single broad-based, statewide provider that provides full representation. NMLA is the lead agency providing broad based, statewide legal services for the eligible poor.

In addition to the broad based or statewide legal services providers, the legal services system structure in New Mexico includes specialized legal services providers who provide assistance in specific substantive law areas, to a particular client type or by utilizing a strategy that is not one of

providing full-service direct representation. Specialized providers play an important role in informing and educating the public and other providers about their particular issue or client group.

Collaboration and Coordination among Providers: The individual legal services providers should operate as though they are part of one coordinated legal services system. Legal services providers must be integrally involved in statewide and regional system planning and improvement efforts. Legal services Executive Directors must commit their organizations to a cooperative statewide approach, meeting on a regular basis to share information about ways to improve the efficiency and effectiveness of their individual organizations and of the system overall. Providing high quality client services accurately and efficiently requires that all providers participate in the centralized referral process as fully as possible. One goal of a service delivery system should be to offer a full range of services to low income persons in need of legal assistance. There are practical limitations that prevent some providers from offering a full range of services themselves. Providers working cooperatively on a statewide basis should develop and support strategies to fill the gaps caused by such limitations. Providers should also coordinate on outreach and education efforts.

Also included in this section are performance indicators to help the system measure its progress towards the goals outlined therein. In order for these performance indicators to be meaningful, quantitative goals and benchmarks must be developed.

Collaboration with Community-Based Agencies and Other Entities: In the same way that effective private law firms seek opportunities to build support for systemic changes that will prevent recurring legal issues for their clients, so should legal services providers use their expertise and advocacy skills to educate and persuade community leaders and client communities to adopt strategies that will reduce the likelihood that common legal problems will befall individual low-income clients.

Legal services programs should offer effective transactional services that can support community based anti-poverty initiatives. Legal services programs should also seek to partner with social workers and case

managers to ensure their clients are able to access services that address their social/emotional needs.

In general, legal services providers should develop stronger partnerships with non-legal community based service providers and community groups/organizations.

Technology and Data Collection: The 2014 State Plan urges the adoption of appropriate and flexible new technological initiatives in the areas of service delivery methods, rural access to services, entry and intake, collaboration amongst providers, self-represented and pro bono services, and professional development.

Technology should be used, where appropriate, to: serve rural, underserved areas through increased use of alternatives to face-to-face service delivery; implement online intake systems that include expert knowledge systems, "smart" checklists, and triage systems; collaborate and share administrative and technology system support; support self-represented litigants with pleadings and forms preparation, e-filing initiatives, remote service delivery, and development of mobile device services; support the legal community with professional development services, and services to enhance limited representation and pro bono work.

The existing statewide website at lawhelpnewmexico.org should be developed as a viable, responsive, up-to-date website and marketed as a trusted portal to resources for use by individuals, advocates and collaborating agencies providing information, access, multi-agency collaboration, outreach, document assembly and forms access.

Self-Represented (Pro Se) Litigants: The 2014 State Plan recognizes the leading role of the judicial branch in providing a basic level of core services to self-represented litigants ("SRLs"). Collaboration among the judiciary, legal service providers, the private bar and others is critical to serving the needs of SRLs. Some of the most common areas of civil legal need for self-represented litigants are: domestic relations, domestic violence, housing, and probate. This section includes aspirational goals for the further development of services for SRLs.

Pro Bono Services: The Ten Step plan adopted in 2007 by the Supreme Court remains an integral part of this 2014 State Plan. These steps are divided into three central elements which are the following:

- Involvement of the judiciary
- Changing the rules of professional conduct and minimum continuing legal education
- Expanding pro bono participation

The Commission will continue to support the efforts of the *pro bono* coordinator housed at the State Bar to support local *pro bono* committees with legal services providers. The work of these committees, especially in collaboration with legal services organizations, is the primary methodology for increasing *pro bono* representation across New Mexico. The section also includes aspirational goals for the further development of *pro bono* services.

Funding the Civil Legal Services System: The 2014 State Plan urges all funders to use the plan as a guide to prioritize, coordinate, and allocate funding among programs and providers. The goal is to increase the availability of free, civil legal services to low income persons in New Mexico. Specifically, the Commission will work to encourage funding that addresses all forms of legal services as provided for in the 2014 State Plan including working with the legal services providers, the State Bar and others to ensure that general legislative appropriations from New Mexico state government adequately address the unmet legal needs of the state's residents. Likewise, the Commission will support efforts that encourage the maintenance of funding from the federal government and private entities other than legislative appropriations at a minimum at current levels and, ideally, increase much faster than inflation.

Further, the Commission will encourage legal services providers to work together to see funding from the private, legal, and general public sectors.

The 2014 State Plan includes a description of the consolidation of "Court-controlled funds" including proceeds from *pro hac vice* registration fees, financial contributions made in lieu of *pro bono* services, and interest on

lawyer trust accounts (IOLTA). The State Bar/Bar Foundation (“State Bar”) will collect and administer these funds, and the Commission will award them to legal services providers. The Commission will ensure that the State Bar as administrator of the Supreme Court-controlled funds, keeps administrative costs at a reasonable level and will recommend to the Court whether the budgets of the Court-controlled funds should be approved.

Quality Review: The 2014 State Plan supports evaluation of the state system for providing legal services to low-income New Mexicans including individual legal services programs, *pro bono* programs, private *pro bono* attorneys, and the SRL component in order to ensure overall system accountability. To confirm the legal services system is providing high quality services in an efficient manner, the system and its legal service programs should be assessed for relevance and effectiveness in addressing client and community needs, adherence to relevant national and statewide standards, and the legitimate expectations of planners and funders.

Internal evaluations should be ongoing through a formal self-review process established by the individual legal services providers, e.g., checking that the legal services provider is adhering to the ABA Standards or Legal Services Corporation (“LSC”) Performance Criteria and the periodic reports provided to various funders.

Professional Development and Training: The provision of high quality and effective assistance to New Mexico’s indigent population requires not only statewide coordination of professional development and training but also individual legal service program instruction for attorneys and advocates. The 2014 State Plan recommends that a lead agency focus on providing training or coordinating with local, regional or national efforts in a range of instruction from basic to advanced, including substantive law areas, advocacy skills, personal development, and management and leadership development. The lead agency should promote coordination and the opportunity for input from the legal services providers in developing a statewide training and professional development plan.

Conclusion: The 2014 State Plan provides guidelines and direction for legal service providers, the courts, funding agencies and others involved in the provision of legal services in New Mexico, as we join together to pursue the

goal of improving and expanding the civil legal services system to meet the legal needs of all low-income New Mexicans.

Appendices

The documents appended to the 2014 State Plan are included to provide context for the reader. These documents include the following.

- A. Supreme Court Order of May 28, 2004, creating the Commission
- B. Brief History of Legal Services
- C. Systemic Advocacy
- D. Supreme Court Order of December 22, 2014, regarding the administration and coordination of civil legal services funds generated pursuant to Court rule

IV. RECOMMENDATIONS

The 2014 State Plan is designed to ensure that access to justice through civil legal services for low income New Mexicans continues to improve. Such progress depends upon the various components of the system meeting certain expectations to the best of their ability within their resources. The following recommendations have been pulled from the body of the text for emphasis and ease of reference.

A. Service Delivery System

1. In order to provide the most appropriate legal services to clients, New Mexico's legal services system must include a full complement of service delivery methods and approaches, including: Legal Advice, Brief Service, Extended Legal Representation, Alternative Dispute Resolution, Systemic Advocacy, Provision of Legal Information, Outreach and Community Legal Education, Assistance to Self-Represented Litigants, Group Representation, Pro Bono Assistance, and Community Economic Development.
2. Individual, direct legal services are a critical function of the New Mexico legal services system; however, the system must also encourage legal service providers to incorporate other service delivery methods and approaches that address client legal needs on a broader scale and in a more strategic manner.
3. Because the full range of service delivery methods is essential to a comprehensive and effective legal service system, funders should ensure that all aspects of the delivery system are adequately funded.
4. Reporting methods that truly reflect the effectiveness of all forms of service delivery must be developed. Public funders must recognize that reporting methods that primarily count the number of people served or cases closed may fail to evaluate the effectiveness of the services provided. These methods may also fail to evaluate the systemic advocacy work of legal service providers.

5. Legal service providers must collaborate and coordinate their service delivery efforts to avoid duplication and redundancy in the system.

B. Rural Services

1. The service delivery system should adequately address rural access barriers based on factors involving cultural and linguistic differences, disabilities, access to internet resources, and access to transportation resources.
2. Legal services providers should regularly monitor their case acceptance protocol to identify and correct factors which cause geographic location of the client's residence to result in disproportionate denial of or limitation of services. Appropriate exceptions should be documented where the services provided are restricted to a defined geographic area by the funding source which supports the services.
3. To the greatest extent possible, legal services providers should collectively assign both rural and urban-based staff to accept, for extended representation, rural cases which fit within the priorities of the provider, but which otherwise would be denied service due to geographical barriers.
4. Legal services providers should adequately invest in videoconferencing and other remote access or mobile internet technologies, alone and in partnership with other agencies, courts and private bar partners, to maximize capacity to communicate with and deliver services to clients in remote rural communities.
5. Where cases are selected to address systemic issues of statewide importance, priority should be given to cases which will result in significant benefits to large numbers of underserved rural clients as well as to clients living in urban centers.
6. Legal services providers should provide sufficient information and self-help resources, alone or in partnership with other

agencies, accessible both by toll-free telephone numbers and through web sites, in order to make such remotely accessible resources reasonably available to all rural clients.

7. Legal services providers, alone or in partnership with other agencies, should ensure that outreach and community education efforts are designed and implemented in a manner that is proportionately accessible and beneficial to clients living in remote rural communities.
8. Legal services providers should offer regularly scheduled rural legal clinic services and other group services events, alone or in partnership with other agencies, giving priority to rural communities where there is not a physical office presence.
9. Legal services providers, to the greatest extent possible, should seek opportunities for sharing of office space and other infrastructure and service delivery resources with community based agencies or pro bono partners in rural communities which otherwise would continue to be underserved.
10. Legal services providers should cooperate with organizations that work closely with those who live in remote locations to better understand issues, to provide education and to facilitate meetings with clients who may be served by either individual or systemic advocacy.

C. Entry/Intake System

1. In order to provide a single entry point for accessing legal services to ensure that all low income people in New Mexico enjoy meaningful and appropriate access to the civil justice system, the 2014 State Plan supports the continued development, expansion and improvement of Law Access New Mexico as the principal gateway for such access.
2. In order to effectively deliver legal services, referral protocols between the primary entry/intake provider and the other legal services providers must be established to ensure accurate

identification of clients' legal needs and that appropriate legal services are provided.

3. The primary entry/intake provider should explore emerging trends beyond telephonic intake, such as online intake, that can be implemented on a statewide basis.
4. The legal services providers should strive to adapt their case management software and computer systems to maximize technological compatibility with the lead entry/intake provider.
5. The legal services providers should seek ways to minimize their general intake in favor of the primary entry/intake provider, assisting the primary entry/intake provider to develop intake processes for specific case or client types and targeting the specialized areas of the legal services provider. For certain case types or client types it may be preferable that the client/applicant access the system through an agency other than the primary entry/intake agency.

D. Collaboration and Coordination among Legal Services Providers

1. Legal services providers must actively participate in systems planning and improvement efforts.
2. The Executive Directors ("EDs") of the legal services providers should meet on regular basis to share information and plan for collaborative measures to realize economies of scale.
3. The EDs of the legal services providers should seek and secure funding in ways that promote non-duplication of services and cooperatively provide the broadest possible range and scope of services.
4. The referral system amongst providers should include a follow-up mechanism in the event a client needs additional referral assistance.

5. While not all providers can provide all services, providers should collaborate to identify strategies that will fill gaps in services.
6. Providers should use the coordinated referral system in order to facilitate more effective client referrals and avoid duplication of services.
7. Outreach efforts should be coordinated and the calendar function of the statewide website should be more fully utilized.

E. Collaboration with Community-Based Agencies and Other Entities

Legal services providers should develop stronger partnerships with non-legal community based service providers and community groups/organizations.

F. Funding the State Legal Services System

1. The Commission will work to ensure funding for a comprehensive and effective legal service system as prescribed in the 2014 State Plan, including working with the legal services providers, the State Bar/Bar Foundation (“State Bar”), and others to ensure that funding from the New Mexico State government through general legislative appropriations adequately addresses the unmet legal needs of New Mexico residents.
2. The Commission will work to ensure that funds from the federal government and private entities are at a minimum maintained at current levels and ideally increase much faster than inflation.
3. The Commission will encourage legal services providers to work together as appropriate in seeking funding from the private, legal, and general public sectors. Legal services providers should communicate with one another to avoid duplication of efforts and, where appropriate, to collaborate on grant writing and other fundraising activities.

4. Resources should be invested to balance geographic access to the legal services system for low-income New Mexicans. This will require the reallocation of current resources as well as the investment of new resources to address areas that are disproportionately underserved.
5. The Commission will encourage all funders of civil legal services to use this 2014 State Plan as a guide in prioritizing, coordinating and allocating funding among programs and providers.

G. Quality Review

1. The state system for providing legal services to low-income New Mexicans should regularly be assessed for system accountability, relevance and effectiveness in addressing client and community needs, adherence to national and state standards, and the legitimate expectations of planners and funders.
2. One entity should be designated to provide systemic quality review and the results of this review should be tied to funding of the legal service providers; in 2014, this entity is the Civil Legal Services Commission.
3. Assessment of providers should include a careful look at outcomes, and these outcomes should be used by legal services providers to ensure that they are (a) achieving client objectives and (b) balancing long-term community needs against compelling legal needs identified by providers in their planning process.

H. Professional Development and Training

1. Staff of the legal services providers of the state should receive substantive law, advocacy skills, and professional development training in accordance with national and state standards.
2. There should be one lead agency to coordinate training in these areas which in 2014 is the State Bar.

3. The lead agency must coordinate with the legal service providers to determine the scope of the training offered and all providers should contribute to the planning process.

V. GUIDING PRINCIPLES OF THE 2014 STATE PLAN

- The mission of the legal services system is to provide civil legal services to low-income and other vulnerable people who cannot afford counsel in the state of New Mexico;
- The legal services system should provide an appropriate legal service to every low-income person with a legal need in the state;
- Access to justice is a core function of government – local, state, and federal – which should be supported by the judicial branch and an organized bar;
- Legal services system planning should involve clients and populations eligible for civil legal services to obtain meaningful information about their legal needs;
- The legal services system should provide services to clients in a respectful and culturally competent manner regardless of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap or serious medical condition, spousal affiliation, sexual orientation or gender identity, citizenship, or state of personal freedom (that is, whether institutionalized/involuntarily confined or not);
- The legal services system should employ a mix of service delivery strategies, including the array of direct representation and systemic advocacy methods, to achieve both the individual client’s objective and to address the broad and compelling legal needs of the low-income community as a whole;
- The legal services system should deliver coordinated, high quality services that are effective and cost-efficient;
- Legal services should be fully accessible and uniformly available throughout the state;

- The legal services system should enhance available services by making effective use of volunteer, and in-kind resources; and,

The legal services system should engage the judiciary and court personnel in reforming their rules, procedures and services to expand and facilitate access to justice.

VI. MEETING THE NEED FOR CIVIL LEGAL SERVICES TO THE POOR IN NEW MEXICO

In the long history of humankind (and animal kind too) those who learned to collaborate and improvise most effectively have prevailed.

Charles Darwin

In the spring of 2005, the Legal Services Corporation (“LSC”) required all of its grantees, including New Mexico Legal Aid (“NMLA”) and DNA-People’s Legal Services serving the Navajo and Jicarilla Apache Nations (“DNA”), to keep track of every request for assistance from eligible persons, and to report the number of eligible applicants who were denied assistance because of lack of funds. In New Mexico, the data showed that for each client served approximately 2.3 eligible persons were turned away because of insufficient funds. This figure was considerably higher than the national average reported by the LSC¹. Therefore, the Commission determined in its spring 2006 report to the Supreme Court² that over 18,000 applicants for legal services are being turned away each year by the two largest civil legal services providers in the state.

Later that year, the System Planning working group of the Commission recommended that the Commission adopt a long-range goal: the system should be large enough to provide an appropriate legal service to every eligible applicant. It estimated that meeting this goal would require an additional \$8,000,000 each year. It also noted that, because funds from the most important national source – “LSC” – had been level or decreasing since 2001, most of the \$8 million would have to come from the state.

The Commission’s 2007 State Plan adopted the recommendation of the Systems Planning working group, and mapped out how the system was to be developed as it progressed toward full funding. While the plan was in development, a coalition of Commission supporters, legal services providers and the organized bar sought a \$4 million appropriation from the

¹ Legal Services Corporation, Documenting the Justice Gap, September 2005: “for every client now served by an LSC-funded program, at least one eligible person seeking help will be turned down,” page 7.

² For a copy of the New Mexico Commission on Access to Justice Report to the Supreme Court of New Mexico, submitted on March 30, 2006, received April 17, 2006, please see: <http://www.nmcourts.gov/newface/access2justice/index.php>, “Commission on Access to Justice Combined Order, Report and Appendices.”

2007 state legislature. The request for an appropriation was met with broad support in the legislature and a recurring \$2.5 million was appropriated. The legislature added the appropriation to the CLS Fund and when combined with the filing fees already in the Fund, contracts to legal services providers increased to roughly \$4 million per year.

As the economic conditions in the State deteriorated over the next few years, the appropriation from the Legislature was reduced. This came at a time when the legal needs of the poor in New Mexico significantly increased. The consumer debt crisis, the foreclosure crisis, and the increase in domestic violence all generated unprecedented demand for legal services.

While it now appears that there may be a small increase in the FY 2014 appropriation, it may be several years before state funds return to their pre-recession level. In the meantime, cuts in federal funding are likely to continue for several more years. This led the System Planning working group to focus in the 2014 State Plan on how the legal services system can do more with less funding: more emphasis on collaboration, systemic advocacy, and use of the latest technology to broaden the impact and reach of legal services while maintaining sensitivity to the unique cultural needs of the poor in New Mexico.

At the same time, the 2014 State Plan continues to be firmly grounded in the ABA Principles of a State System for the Delivery of Civil Legal Aid and Standards for the Provision of Civil Legal Aid. Readers who are not sure about the intent behind any statements in this State Plan are encouraged to refer to the documents themselves, which can be found at: http://www.americanbar.org/groups/legal_aid_indigent_defendants/policy.html.

VII. LEGAL SERVICES SYSTEM STRUCTURE

A. Service Delivery

The legal services system should provide appropriate legal services to every low-income person with a legal need in the state.

1. Introduction

The 2014 State Plan recommends a full range of service delivery methods³ in an attempt to provide the most appropriate legal services for New Mexico's indigent population. In determining the most appropriate service delivery methods, the legal services provider should determine if the method effectively responds to the compelling, unmet legal need of the person seeking assistance. A provider, for a variety of reasons, may not necessarily address every aspect of a client's legal problem. For example, because the level of requests for its services greatly exceeds the level of its staff and other resources, a provider may find it necessary to identify ways in which it can provide some meaningful assistance short of addressing the entirety of a client's legal problem, a concept known as "limited representation". When legal services are provided by limited representation, i.e., broken down into discrete parts, a legal services provider utilizes a service delivery method which, by its nature, addresses only a portion of what a client might need to fully resolve the legal problem.⁴ Other criteria a provider might utilize in choosing a service delivery method might be the effectiveness of different service delivery methods in addressing a particular problem, what is at stake for the client in the particular case or whether the client has the capacity to self-represent. The legal services provider should not choose a service delivery method based solely on the number of persons able to be served. State funders who require targeted numbers of people served should take into account that the

³ ABA Principles of a State System for the Delivery of Civil Justice

⁴ ABA Standard 3.4 on Limited Representation: "A provider may limit its representation to specific tasks and activities undertaken on a client's behalf, if the limited representation is reasonable under the circumstances and the client knowingly consents to the limitation."

most appropriate service delivery method may not generate the highest number of people served.⁵

The 2014 State Plan, therefore, is aspirational in the sense that if the full level of resources were committed to its implementation, the Plan would be realized. Realistically, given limited resources, there are necessary limits on the full realization of the Plan at this time.

Note: Some of the service delivery methods listed below are discussed in greater detail in other sections of the 2014 State Plan, as noted.

2. Service Delivery Methods

A coordinated legal services system necessarily encompasses a full complement of service delivery methods and approaches. Those methods and approaches are listed in this section. The traditional backbone of any such system has always been individual and direct legal service in which the advocate handles a specific legal issue for a specific client. New Mexico's 2007 State Plan had focused primarily on how to best serve the low income community through this aspect of the system. In the 2014 State Plan, this section envisions a truly coordinated system that will address clients' legal needs on a broader scale and in a strategic manner. This ensures that what advocates learn from handling their individual client's needs can be used to address the problems faced by those who are not served individually by the system and to achieve lasting benefit for the low-income community.

A coordinated system is essential to ensuring that the most effective strategies are used to meet the legal needs of low-income communities within available resources. First, coordination requires effective systems of communication among legal services providers and between providers and other organizations. Without sufficient resources they simply

⁵ State funders should place emphasis on whether the agency is fulfilling its role and responsibilities under the State Plan.

cannot engage in the coordinated communication needed to ensure the most effective use of the comprehensive advocacy approach. Second, funding sources must be sufficiently diversified so that the restrictions that some funders impose will not mean that most providers are completely unable to utilize the effective systemic advocacy modalities of their choice. Third, funders should ensure that all aspects of the delivery system are adequately funded.

The 2014 State Plan sees systemic advocacy, not as a luxury option to be exercised (or not) as a mere adjunct to individual representation, but rather it is a necessary component not only of the coordinated civil legal services system as a whole, but of the work of each provider within that system. Put plainly, no one delivery method is better than another. All are essential to a coordinated system. That being said, some providers will necessarily spend the bulk of their resources on individual representation, while others will concentrate on effecting systemic reform.

- a) Legal Advice⁶
Is typically used by legal services providers in helplines or in clinic settings to provide an effective way to respond quickly and economically to the needs of large numbers of persons. Legal advice may include preventive advice to help clients avoid legal problems by advising them of appropriate steps to take, defensive advice regarding steps that might be taken in the face of threatened litigation or other adverse action, or affirmative advice regarding how to proceed to assert a right or claim.
- b) Brief Service⁷
Is generally legal representation that is directed only to certain aspects of a legal matter and may include guidance and information on preparation, filing and

⁶ ABA Standard 3.4-1

⁷ ABA Standard 3.4-2

serving of documents, document or letter preparation, legal research and analysis, communicating with third parties on the client's behalf, factual investigations, and coaching.

- c) **Extended Legal Representation**⁸
Involves identifying the client's legal problem, determining the client's objective, and pursuing the objective rigorously throughout the matter. It is important to note that extended representation may also be undertaken to address a discrete component of the client's legal matter in a rigorous manner, but not other components.⁹ Factors in determining whether to provide extended representation include situations where the facts and/or law are complex, the forum is challenging for litigants, cultural or language barriers exist, or the client has a disability. The gravity of the potential harm to the client may also be a factor in determining that extended representation is necessary;
- (1) Legal services providers should make an informed decision about what types of extended representation will be offered, when this service delivery method will be offered, and when offered, what level of support should be provided.
 - (2) Among other things, extended legal representation includes litigation before all types of judicial and quasi-judicial tribunals, including courts and administrative tribunals.
- d) **Negotiation and Alternative Dispute Resolution**¹⁰
May be used in a variety of ways to achieve the client's objectives without unacceptable risks. Negotiation may be used in non-hostile situations or as a prelude to litigation. Alternative Dispute Resolution resolves

⁸ ABA Standard 3.1

⁹ ABA Standard 3.4 on Limited Representation

¹⁰ ABA Standards 7.9 and 7.10

disputes outside the formal judicial process. Neither form of resolution should substitute for another method, unless it has been determined to be the best course of action or only course of action for the client.

e) Systemic Advocacy

Includes a broad array of strategies and activities that are designed to achieve broad and lasting results to address the legal needs of low-income persons and communities.¹¹ Examples of systemic advocacy activities include, but are not limited to:

- (1) Legislative, administrative and policy advocacy¹² plays an essential role in promoting the adoption of laws and policies that are favorable to the interests and needs of low income communities and defending against those that are detrimental to those interests. Legal services providers working in this area should be responsive to their client communities and other legal services providers by using legislative, administrative and other public policy advocacy, reporting back to them the results of their efforts, and providing them with information that would be useful in promoting system-wide response to legislation, policy, rules, or regulations. Examples of this type of advocacy include formal rulemaking, informal intervention in an administrative agency when the agency is misapplying the law or engaging in practices that limit access to benefits or rights among low-income persons, media advocacy, and other non-representational strategies, such as participation in bar and judicial commissions to improve access to justice for low-income persons.

¹¹ ABA Standard 2.6. Please refer to Appendix B for a comprehensive list of systemic advocacy modalities.

¹² ABA Standards 3.2 and 7.13

- (2) Community organizing
- Is both a tool and a strategy to affect policy change. Essentially, it involves engaging members of a particular community to develop a sustainable structure to facilitate action on behalf of their self-identified interests. Legal services organizations may work with community organizing groups in a variety of ways that can help them more effectively and economically advocate on behalf of their constituents. A community organizing group might contact a legal services organization to provide advice regarding a statute or policy about which the group is concerned. In turn, the legal services organization may approach the community organizers to support the administrative or legislative advocacy in which the legal services provider is already engaged. Often this means that community organizers help gather personal stories regarding how the law or policy affects the public and then works with the legal services advocate to not only deliver that message to decision makers, but also to identify individuals who need legal representation but might not otherwise have access to it. At other times, the legal services provider and the organizing group may work more closely from the beginning, to identify key community issues and to develop collaborative advocacy strategies. In all cases, legal services providers benefit from working with community organizers in that they become better able to understand and address systematically the legal needs of the people they serve. As legal services organizations face challenges due to shrinking budgets, increased need and daunting geographic barriers, working with community organizers

becomes an increasingly important component of delivering effective legal services.

- (3) *Amicus curiae* briefs
Are commonly filed in appeals concerning matters of a broad public interest, and are therefore cases that have good potential to set precedent on a particular point of law. A legal service provider with strong interest in or views on the subject matter of an action, but not a party to the action, may petition the court for permission to file a brief, ostensibly on behalf of one of the parties but actually using it as an opportunity to alert the court as to the effect of the case on the interests of the particular constituency of the legal service provider. An *amicus curiae* educates the court on points of law that are in doubt, gathers or organizes information, or raises awareness about some aspect of the case that the court might otherwise be unaware.
- (4) Affirmative litigation
Is a class-action suit or individual civil action brought to advance the rights or interests of people who are interacting with the government or other entity, which has the objective or the effect of initiating system change in policies affection the low-income community.
- f) Provision of Legal Information¹³
Can supplement the system wide delivery of legal services and has the benefit of providing information to individuals allowing them to learn about their legal rights and responsibilities, assert their interests or avoid legal problems. Examples include development of written brochures and manuals, and posting of legal information on websites.

¹³ ABA Standard 3.6

- g) **Outreach and Community Legal Education¹⁴**

Should be used by the legal services providers to both give and gain information. Outreach and community legal education can be a delivery method to provide program information in addition to legal information or another appropriate legal service based on the service type or client type. In addition, effective communication with the low-income population serves as an essential ingredient for providers to assess the legal needs of that population.

 - (1) Examples include workshops and informational clinics.
 - (2) Outreach methods in New Mexico should take into account the rural nature of the state, the diversity of cultures, and linguistic barriers to information and services.
- h) **Assistance to Self-Represented Litigants¹⁵**

Focuses on increasing the capacity of individuals to represent themselves in areas where they can obtain the objectives they seek. Legal services provider assistance may include a wide variety of approaches from offering forms in a self-help center, to web-based material, informational clinics, or telephone interviews. For more information on *pro se*, please refer to Section II(F), page 33, Self-Represented (*Pro Se*) Litigants;
- i) **Group Representation¹⁶**

Includes assisting both groups and organizations that are made up of low-income New Mexicans and those groups that seek to respond to the needs of the communities served by the providers. Representation may include any of the service delivery methods appropriate in a group setting. Legal services providers should ensure they have

¹⁴ ABA Standard 2.1

¹⁵ ABA Standard 3.5 and see also section on Self-Represented (*Pro Se*) Litigants

¹⁶ ABA Standard 7.16

the capabilities necessary for effective representation at this level. This type of interaction with the client base community has the added effect of providing an important source of information about the needs of the community or client base.

- j) *Pro Bono Assistance*¹⁷
Introduces the valuable resource of the private bar into the service delivery system for the 2014 State Plan. Legal services providers may seek to integrate assistance from the private bar in a variety of ways including access to justice projects, self-represented litigant court clinics, policy advocacy, joint projects, filling in gaps in service, responding to cultural and linguistic diversity, training and mentoring, and resource development. For more information on the *Pro Bono* program in New Mexico, please refer to Section II(G), page 37, *Pro Bono Services*.
- k) *Community Economic Development*¹⁸
Seeks to increase assets available to produce needed housing, goods and services, and provide employment opportunities for low income persons. Legal services providers may address legal aspects of the formation of community and business organizations, business counseling, transactional support in property acquisition and financing, compliance with business licensing and employment laws, taxation issues, loan agreements, leases and contracts, corporate counsel, and examining and monitoring legislation that could affect the client base or projects.

B. Priority Client Types and Substantive Legal Areas

The legal aid system should provide an appropriate legal service to every low-income person at or below 200% of the federal poverty guidelines and residing in the state of New Mexico regardless of race color, creed, gender, sexual orientation, religious affiliation,

¹⁷ ABA Standard 2.7 and see also section on *Pro Bono Services*

¹⁸ ABA Standard 3.3

nationality or state of personal freedom (that is, whether institutionalized/ incarcerated or not).

When planning for their agencies, legal services providers should identify client types and substantive law areas to be given priority.. These priority areas are not intended to be exclusive of other client types or substantive law areas in which the need for civil legal services has been demonstrated.

To prioritize between the types of legal needs and the client types, legal aid providers should have a protocol that does the following.

- Distinguishes between applicants based on client type for determining which applicant will receive service within the type of cases being accorded a priority.
- Identifies type of case, regardless of client, *that will be a priority for service.*

1. Client types: Factors Warranting Special Consideration

When selecting which client types to prioritize, providers should give special consideration to factors that impact the person's ability to have meaningful access to justice including, but not limited to: language or cultural barriers; age; limited education; mental or physical limitations and the power difference between the parties (e.g. the other party is represented).

2. Substantive Law Areas Identified for Priority Status Statewide

- a) Needs assessments conducted in NM and other states consistently point to certain areas of substantive law where the needs are most critical. These core areas should be given priority in funding and resource allocation. Representation for these core substantive law areas should be geographically distributed so that representation is available in every judicial district throughout the state. *The five areas are:

- i) Housing: Foreclosures, landlord/tenant, public housing, federal subsidized housing, home ownership, real estate contracts, and utilities;
 - ii) Consumer: Debt collection, unfair trade practices, predatory lending, repossessions, and contracts and warranties;
 - iii) Family law: Domestic violence, divorce, parentage, custody and visitation, child support, guardianship, and cases when the opposing party is represented;
 - iv) Employment: Removing barriers, wage and hour issues, unemployment insurance, benefits, and systemic employment discrimination; and,
 - v) Government benefits/health: Access to healthcare, prescription drugs, Medicare, Medicaid, long term care, income maintenance, food stamps, SSI, SSDI, survivors' benefits, social security retirement, temporary aid for needy families, general assistance and tax programs benefiting low-income earners.
- b) *Other areas of need worthy of resource allocation include:
- i) Protective services: Advance health care directives and powers of attorney;
 - ii) Elder issues: Abuse, neglect and exploitation - both physical and financial, institutional care, Medicaid, age discrimination, and guardianship;
 - iii) Education: Special education, school enrollment, suspension and expulsion, bullying, discrimination;
 - iv) Disability issues;
 - v) Water and land use;
 - vi) Immigration and migrant workers; and,

vii) Native American issues.

*The above substantive law areas are not listed in order of importance.

C. Rural Services

Legal services should be fully accessible and uniformly available throughout the state.

1. Introduction

The ABA Standards recommend that states aim for a balance between a centralized system (with most providers serving an entire state from a single large office) and local offices dispersed throughout the state. The centralized providers are more efficient in persons served per dollar, whereas the local offices provide greater access to particularly vulnerable clients, including those who are mentally or physically disabled, for those whom English is not their native language, and for those who do not have access to technology.

The ABA Standards recognize the difficulty of meeting the needs of legal services clients who live in areas outside of the urban settings in which many providers are often concentrated.¹⁹ In New Mexico this is certainly true as great distances, limited transportation, language and cultural diversity, limited technology options and deep poverty all hinder access to needed legal services. Furthermore, the rural population has the same challenges with respect to accessing the district courts. In order to ensure these difficult to reach and serve clients are provided the same level of services available to urban clients, the ABA Standards recommend a balanced approach between centralized offices that serve clients throughout the state and dispersed local offices.

The 2007 State Plan prioritized opening more offices in rural areas. However, funding for legal services has been so consistently inadequate that even as the need for service has grown, staffing has fallen and offices have been closed. While most statewide providers do reach significant numbers of

¹⁹ See Comments to ABA Standard 2.2

clients in rural areas, they continue to face great challenges to achieving the goal of equal service – both in raw numbers of clients served and in provision of service at the same level of intensity. Since funding will not likely rise to meet the need, it is clear that New Mexico’s legal services providers must employ creative solutions to serving rural communities.

The 2007 State Plan focus on brick and mortar law offices has not been a strategy that successfully met the needs of our rural population. Not only has the available funding not supported the maintenance of such offices, but developments in technology and innovative approaches to in-person service lead us to broaden our recommendations for ensuring that legal services are fully accessible and uniformly available throughout the state.

Providers reported that while most of them are willing to serve clients throughout the state, the vast majority of their services are accessed by clients living in more urban settings. Indeed, while about half of New Mexico’s total population resides in rural areas, less than 1/3 of the legal services providers’ full-time attorney resources serve that group. Those rural clients that did receive services were less likely to receive “extended representation” services than urban clients – perhaps a function of the fact that the lawyers had a more difficult time appearing in remote rural courts. Some rural counties received little or no legal services from most of the providers that strive to serve our entire state. These providers consistently reported an array of barriers to reaching potential clients in rural areas, which include the following.

- a) lack of resources needed to hire adequate legal staff;
- b) long distances from home offices – even when the provider maintains offices in geographically diverse areas;
- c) transportation problems facing potential clients;
- d) language barriers;
- e) potential clients are not aware of available services; and,

- f) lack of social service agencies in the area that could refer potential clients.

In order to best serve their rural clients – especially in light of persistently inadequate funding – legal services providers will need to employ both the convenience and access advances that electronic technology offers, together with providing face-to-face service in innovative ways. The technology advances that incorporate video conferencing could allow attorneys and their support staff to meet with clients from hundreds of miles away in a manner that allows for a more personal interaction than the telephone. Some of this technology allows for simultaneous language interpretation. The initial cost of the equipment required is relatively modest compared to the benefit to clients and the savings in travel expenses.

Cooperative arrangements should be made between the legal services provider and a local entity that could host both the equipment and the clients. Social services agencies, libraries, schools, health clinics and government offices are examples of such locations.

Providers should also make greater use of alternatives to face to face approaches to delivering legal services. Many of these are already utilized by some providers, but could be employed more broadly in order to better serve those clients who are not currently served by traditional offices. One such approach already significantly implemented is the statewide telephonic legal service offered through Law Access New Mexico. Accessible in all areas by way of a toll-free number, it serves as both a provider of limited legal services and a potential gateway to all of the state's free legal services providers. Another approach the ABA Standards recommend is for providers to establish and maintain contact with client and community groups and social services providers who are often best informed about the serious issues affecting rural communities. This will enhance the providers' ability to respond effectively to their clients' most pressing needs.

2. Alternative and Cooperative Approaches

- a) **Coordinated Outreach Activities**
Legal services organizations may assist each other in their outreach efforts, particularly when resources do not permit each organization to attend as many events or travel as freely as it would like. The legal services organizations would cooperate in attending events (or otherwise traveling) by, among other things, rotating attendance and agreeing to distribute one another's literature and informational materials.
- b) **Legal Clinic**
A scheduled place and time when potential clients can meet with a legal services attorney or staff for screening and intake, or to receive legal information and legal advice.
- c) **Para-Professionals or Other Non-Attorney Staff**
Legal services organization staff or volunteers who are not attorneys but who work under attorney supervision in a legal support role. These workers include paralegals and lay advocates who may provide clerical support, conduct intake interviews and investigation and represent clients in matters (such as administrative hearings) which do not require representation by licensed attorneys.
- d) **Partnering with Law Schools**
Legal services offices may work cooperatively with, or refer cases to, legal practicum programs or clinics housed in a law school. Students authorized to represent clients under the supervision of law professors or cooperating attorneys will handle client matters in specific areas of law in which the students are receiving training.

- e) **Sharing Resources with Other Agencies**
Legal services organizations may cooperate with each other to maximize utilization of resources and benefit from economies of scale by sharing office space, infrastructure, equipment and supplies and by sharing personnel when appropriate. Organizations that do this will take necessary steps to ensure that client confidentiality is in no way compromised by such sharing.
- f) **Telephonic Legal Services**
A legal organization operating a statewide service that takes legal services inquiries from all areas of the state. The organization employs lawyers who provide both advice and referrals and brief legal services.
- g) **Traveling Attorneys**
Legal services organizations may employ attorneys who are based in a traditional office, but who periodically provide legal services outside of the office as well. Such attorneys conduct regularly scheduled hours in specific locations in those outside areas and provide an array of services including, case intake, advice, information and education.
- h) **Traveling Office**
A mobile legal (RV, van, car, etc.) office staffed by a legal services attorney and which is equipped with computer, copier, scanner, fax, printer, internet access, and other necessary equipment. Traveling office attorneys are sometimes referred to as “circuit riders.”

The traveling office regularly visits certain locations from which residents are not easily able to access established legal services offices or even outreach clinics. Because the vehicle is fully equipped, the traveling office can serve individual clients in the most remote locations when necessary.

Providers could arrange with local courts to use technology to appear with their clients from remote locations.

Legal services providers could partner with other mobile services – such as health clinics or food pantries – to more effectively reach low income clients

- i) **Volunteer Lawyers**
Legal services organizations may form agreements with outside counsel to handle cases that are either beyond the organization’s capacity or which are outside its area of expertise. Such attorneys include those who seek to fulfill their *pro bono* publico obligation, those who have emeritus status and others who are willing to volunteer their time and expertise.
- j) **Community Groups and non-Legal Providers**
Legal services providers may cooperate with organizations that work closely with those who live in remote locations to better understand issues, to provide education and to facilitate meetings with clients who may be served by either individual or systemic advocacy.

3. Measuring Progress

The performance indicators listed in the 2014 State Plan are intended to provide the system with a way to measure progress toward the goals of the plan. In order for these performance indicators to be meaningful, quantitative goals and benchmarks must be developed.

- a) Increased funding for the provision of civil legal services to rural impoverished areas without corresponding reductions in funding to already under-resourced urban areas.
- b) Increased provider efficiency in delivery of services in urban areas allows for shift of resources to rural ones.

- c) Improvement in ratio of legal services provider full time employees serving urban and rural clients to the number of potential clients in each area.
- d) Measurable increase in “extended representation” legal services to rural clients for case types similar to cases which receive extended representation when occurring in an urban area.
- e) Measurable increase in advocacy for rural community groups.
- f) Funders for civil legal services for the poor actively encourage - and provide resources for – methods of service delivery that enhance access by impoverished rural clients.
- g) Courts formulate and implement plans to cooperate with legal services providers to better facilitate access by impoverished rural litigants through alternative means, e.g. appearance in court via videoconference technology.

D. Legal Services Providers

The legal services system should provide high quality services in an effective and cost-efficient manner, be tightly coordinated without unnecessary duplication of service, and fully accessible and uniformly available throughout the state. This is achieved through a professionally staffed civil legal services system.

1. Introduction

The professionally staff civil legal services system consists of three main components: a) an entry/intake system, b) broad based professionally staffed civil legal services providers, and c) specialized legal services providers. Each component may be responsible for one or more of the service delivery methods reviewed in this plan.

2. **Entry/Intake**²⁰

The 2014 State Plan supports an entry/intake system that will provide the majority of low income participants needing civil legal assistance in New Mexico a primary point of entry to gather basic contact information, ascertain the nature of the civil legal issue, identify the legal need, and then direct the client to the appropriate legal service. The goal is an efficient, coordinated, “easy to use” entry/intake structure for the civil legal services system, where no participant needs to contact more than two legal services providers before obtaining appropriate legal assistance. It is important that this entry/intake process fosters confidence in the client/applicant as he or she enters the civil legal services system.

- a) Primary Statewide Point of Entry
 - (1) Under this plan, one agency is identified as the primary entry/intake provider responsible for accurately identifying the legal needs and referring for the most appropriate legal service. Identified non-legal issues or needs should be directed to the appropriate agency or social service provider. Currently, the lead agency providing statewide entry/intake is Law Access New Mexico (LANM). This service is currently provided telephonically. As the lead agency, Law Access New Mexico has responsibility for the first point of contact with a majority of New Mexico’s indigent population, including areas covering rural and non-English speaking clients.
 - (2) In order to reach the established goal of only two contacts between the client and the appropriate legal service, it will be critical that the lead intake agency fully understands what types of client/applicants and legal issues can be accepted by the other legal services providers. This

²⁰ ABA Standard 4.1

understanding and depth of communication will be best met by the establishment of "referral protocols" between each legal services provider and the lead agency. Additionally, referral protocols amongst the other legal services providers would provide a more comprehensive understanding within the legal services community as to what types of clients and legal issues each agency is able to serve.

- (3) The lead agency must keep current on technology and training issues that impact the intake process and should communicate with other legal services providers on improving the entry/intake system. It should explore emerging trends beyond telephonic intake that can be implemented on a statewide basis that might serve the client/applicant population beyond telephonic intake. Finally all legal services providers should strive to adapt their case management software and computer systems to maximize technological compatibility with the lead entry/intake agency.
- (4) Other legal services providers should strive to encourage all applicants for legal services to apply for services through the statewide entry/intake program. The lead entry/intake provider should coordinate closely with other legal services providers to ensure that the intake and eligibility information that is gathered will minimize the need for applicants to provide duplicate information when a referral is made by the intake program to another legal services provider and meet the goal of no more than two contact points between the client/applicant and the legal services provider to whom their case is ultimately referred.

- (5) On-line systems for intake, self-help, and legal information are rapidly developing around the country, including in New Mexico. Online intake is still a growing field, but it has the capacity to improve service to potential clients, save call center workers time, lower the volume of data entry into case management systems, and (ultimately) to help programs stretch their budgets further to serve more clients more efficiently. All providers, and especially the primary entry-intake provider, should be involved in efforts to develop these system
 - (6) Legal services providers should undertake an effective marketing and outreach campaign to educate the client population and the general public about how to access services. Providers should also work together to address barriers to legal services such as general client distrust, confusion about legal proceedings, confusion about which agencies and courts are involved in which types of cases, individual client vulnerabilities such as disabilities, language barriers, and lack of education; and practical barriers such as lack of transportation or inability to attend court or administrative agency hearings that conflict with family or employment obligations.
- b) Other Points of Entry into the System
- (1) The 2014 State Plan recognizes that participants seeking civil legal services will access the system in ways other than through LANM. However, it should be the goal of all legal services providers to seek ways to minimize their general intake, in favor of the lead agency (and/or online intake) as outlined above, and move towards a more active intake, that is, intake seeking only specific case

types or client types targeting the specialized areas of the legal services provider.

- (2) While New Mexico Legal Aid and DNA People's Legal Services provide broad based legal representation for low income people, other programs provide case-type and/or client-specific services and entry points including those for recent immigrants, persons with disability issues, seniors, minors, and victims of domestic abuse. These legal services providers have traditionally conducted intake in manners previously deemed most convenient for the client/applicant: office walk-in, office appointment, telephone intake, and/or contact at outreach locations. For certain case types or client types it may be preferable that the client/applicant access the system through an agency other than the primary entry/intake agency.
- (3) All legal services providers conducting intake operations via telephone, website, or in person should ensure their operations are designed to accurately compile basic contact and demographic information, to make a prompt determination of eligibility, and to identify the nature of the legal problem.

c) Measuring Progress

The performance indicators listed in the 2014 State Plan are intended to provide the system with a way to measure progress toward the goals of the plan. In order for these performance indicators to be meaningful, quantitative goals and benchmarks must be developed

- (1) All legal services providers funded by the Civil Legal Services Commission have established referral protocols with the designated lead intake agency.

- (2) The number of intakes conducted by legal services providers other than the designated lead intake agency decreases and the number of referrals made by the lead intake agency to all other legal services providers increases.
- (3) Increase annually in the number of legal services providers who operate with a case management system that enables electronic transfer of client and case information from the primary entry/intake agency.
- (4) New Mexico's civil legal services system has a client friendly website equipped with tools for online intake, assistance for self-represented litigants, and a comprehensive library of legal information.

3. Broad Based Professionally Staffed Civil Legal Services Providers

- a) The legal services system structure in New Mexico includes a single broad-based, statewide provider that provides full representation. Full representation involves identifying the client's legal problem, determining the client's objective, and pursuing the objective rigorously throughout by using all services available which includes, but is not limited to, advice and counsel, brief services, negotiations, individual representation in a variety of tribunals, and systemic advocacy. NMLA is the lead agency providing broad based, statewide legal services for the eligible poor.²¹
- b) As the lead broad-based, statewide agency, NMLA has offices statewide to provide clients with maximum access to legal assistance. NMLA makes special efforts to reach vulnerable groups such as rural populations,

²¹ DNA-People's Legal Services, Inc. also provides broad based legal aid to low income people in San Juan County.

Native Americans, Migrants, and people with limited English proficiency. NMLA determines the appropriate level of service to offer the client. Factors involved in this determination include the merit of the client's case, considering the individual fact situation and the law, the client's vulnerability, the available resources, and the client's ability to represent him/herself considering various limitations, including those imposed by mental or physical disability or by language difficulties. The client is provided with the appropriate level of services from which he/she would benefit consistent with these factors.

- c) In addition to the broad based or statewide legal services providers, the legal services system structure in New Mexico includes specialized legal services providers who provide assistance in specific substantive law areas, to a particular client type or by utilizing a strategy that is not one of providing full-service direct representation. Some specialized providers offer services statewide, others serve a limited geographical area. Specialized providers play an important role in informing and educating the public and other providers about their particular issue or client group.
- d) Specialized providers should periodically review their services to ensure that they are properly utilizing the services of the lead broad-based agency and not duplicating those services. As needs assessments are conducted the specialized providers that are funded by the legal services system will change to focus on those needs.

4. Collaboration and Coordination Among Providers

- a) Introduction
The 2014 State Plan is akin to a strategic plan for the legal services system. As such, it *must* be considered when each provider is developing its own strategic plan

and/or service area priorities. The individual legal services providers should operate as though they are part of one coordinated legal services system. To enable this, providers must actively participate in system planning and improvement. Providers should also coordinate their services at all levels: direct legal services, community education, outreach, and systemic advocacy. The reasons for requiring this level of cooperation are established in the ABA Standards (2.3).

- (1) The efficiency and effectiveness of the system can be enhanced in many instances by joint planning to coordinate approaches;
 - (2) Some providers are better situated than others to provide particular services and joint planning and coordination can assure that a full range of services are available;
 - (3) Cooperation among providers is important for the system to be able to offer relatively uniform access to all persons in need of legal assistance;
 - (4) Participation in the larger delivery system should identify strategies to expand available resources; and,
 - (5) Providers can realize economies of scale in connection with administrative needs or can cost-effectively share costs.
- b) Participation in Statewide and Regional System Planning and Improvement Efforts²²
- Legal services providers must be integrally involved in statewide and regional system planning and improvement efforts such as the Access to Justice Commission and local *pro bono* committees. Each provider should identify staff members who are best equipped to participate in a particular system

²² ABA Standard 2.3

effort, including determining whether a staff member, manager, or executive director (“ED”) is appropriate for the assignment. Continuity of participation is critical to the productivity of these efforts which are time consuming and involve diverting resources away from services to clients. Each provider should have at least one staff member involved in an ongoing, consistent way in a Commission working group or related *pro bono/pro se* effort.

c) Working Together to Realize Economies of Scale in Connection with Administrative Needs²³

Legal services Executive Directors must commit their organizations to a cooperative statewide approach. To do so, they should meet on a regular basis to share information about ways to improve the efficiency and effectiveness of their individual organizations and of the system overall, including information about ways they can realize economies of scale in connection with administrative needs such as bulk purchasing, pooling employee benefits, coordinating case management and data gathering systems, and sharing information about preferred vendors. The EDs should also coordinate fund raising efforts such that they seek and secure funding in a way that promotes non-duplication of services and instead cooperatively provides the broadest possible range and scope of legal services.

d) Client Referral Coordination

Providing high quality client services accurately and efficiently requires that all providers participate in the centralized referral process as fully as possible. In order for the system to achieve the goal of only two contacts before a prospective client reaches appropriate legal assistance, the system must have a mechanism whereby providers have access to accurate, up to date information on what services each provides, what their current priorities are, and their current capacity to take on new clients.

²³ ABA Standard 2.3

Each provider should develop a document that includes information about services provided, eligibility for services, whether services are free or delivered on a sliding fee scale, and their intake process. In addition, providers should develop a list of the substantive areas of law they are prioritizing for a given period of time. A central consideration in developing this list should be whether another provider is already addressing a particular area of law. This list should also define what service delivery method will be used for each area of law. Finally, the providers should revisit, at least on a quarterly basis, their current capacity to take on new cases. This information should be made available on a coordinated centralized website (e.g. LawHelpNM) that is accessible to both providers and the general public.

Providers should establish a mechanism for follow-up and feedback to improve the referral system including a procedure for re-referring or referring on a case that cannot be assisted by the initial referral. These procedures should be designed to limit the impact of the referral on the prospective client. The referral process should include providing the client with information about the intake process of the agency to which he/she is being referred.

e) Coordination of Service Delivery Methods and Substantive Areas of Law

One goal of a service delivery system should be to offer a full range of services to low income persons in need of legal assistance. There are practical limitations that prevent some providers from offering a full range of services themselves. Providers working cooperatively on a statewide basis should develop and support strategies to fill the gaps caused by such limitations.²⁴

Providers should assume responsibility for knowing what services are being provided by other providers both in terms of areas of substantive law and service delivery methods. This is

²⁴ ABA Standard 2.3

important both to ensure effective client referrals, and to avoid duplication of services. For instance, before seeking funding to create a new telephonic helpline, a provider should consider whether the primary agency providing assistance over the telephone could do as good or better job and should consult with that agency before moving forward. Or, before launching a new program to serve victims of domestic violence, the provider should survey existing DV providers to find out if the contemplated project would, in fact, be adding value.

Providers should also coordinate on outreach and education efforts. The LawHelpNM website should include a calendar where providers can post information about upcoming opportunities for outreach and education at resource fairs, health fairs, conferences, expositions, etc. This calendar should be updated on a regular basis. In addition, providers who are attending events around the state should notify other providers and offer to display their outreach/education materials at said event. With sufficient funding, providers should formally coordinate outreach efforts to ensure that eligible clients all over the state are aware of the legal services available to them.

f) Measuring Progress

The performance indicators listed in the 2014 State Plan are intended to provide the system with a way to measure progress toward the goals of the plan. In order for these performance indicators to be meaningful, quantitative goals and benchmarks must be developed.

- (1) Each provider has at least one staff member involved in an ongoing, consistent way in an ATJ Commission working group or related pro bono/pro se effort.
- (2) Executive Directors meet on at least a quarterly basis.

- (3) Each provider has shares with each other provider on an ongoing basis their substantive law priorities, service delivery methods, intake process, and current capacity to accept new cases.
- (4) LawHelpNM has up-to-date information on each provider's substantive law priorities, service delivery methods, intake process and current capacity to accept new cases.
- (5) LawHelpNM has an up-to-date outreach calendar that providers can consult for opportunities to do outreach and/or coordinate outreach with other providers.
- (6) Providers regularly consult the LawHelpNM outreach calendar and coordinate their outreach efforts with those of other providers.

5. *Collaboration with Community-Based Agencies and Other Entities*

In modern legal aid systems, traditional court-based or administrative agency representation of individual clients should not be the exclusive strategy that legal services providers offer to their client communities. Legal services programs also need to develop the resources and skills to offer effective transactional services which deal with the broader issues facing clients. For example, some legal services programs may develop programs that can support community based anti-poverty initiatives such as micro-lending programs which help clients launch their own home-based businesses. Other legal services programs might partner with social workers and other social service providers to permit access to non-legal services to address social emotional needs the client presents. For example, after helping a homeless to youth to become emancipated, the youth may need access to services to address a history of traumatic experiences.

These types of alternative services which have power to prevent frequently recurring legal problems will require a strong commitment to community involvement and cross-discipline service from legal services organizations and their staffs. Legal services providers should use their expertise and advocacy skills to educate and persuade community leaders and client communities to adopt strategies that will reduce the likelihood that common legal problems will befall individual low-income clients.

In general, legal services providers should develop stronger partnerships with non-legal community based service providers and community groups/organizations. These partnerships can help the legal service providers to stay more closely tuned to the needs of the client population, learn effective strategies to engage clients in services, and develop new strategies to deepen the impact of their services.

6. Quality Review

To be certain the system is providing high quality services to as many people as possible and that the available resources are being used efficiently.

a) Introduction

The 2014 State Plan supports evaluation of the state system for providing legal services to low-income New Mexicans including individual legal services programs, *pro bono* programs, private *pro bono* attorneys, and the self-represented litigant component in order to ensure overall system accountability.

b) Assessment

In order to ensure that the state system of legal services described in the 2014 State Plan is providing high quality services to as many of the state's low-income and vulnerable populations as possible and that the available resources are being efficiently used, the system and its legal service programs should be assessed "for relevance and effectiveness in addressing client and community

needs, adherence to relevant national and statewide standards, and the legitimate expectations of planners and funders.”

It is recommended that one entity provide this quality review and that the review be tied to funding of the legal services providers. At the present time that entity is the CLSC. The CSLC conducts site visits and other review of providers’ performance using the 2014 State Plan and relevant and national standards like the ABA Principles of a State System for the Delivery of Civil Legal Aid, the ABA standards for Providers of Civil Legal Aid to the Poor and LSC Performance Criteria.

Assessment of providers should include a careful look at outcomes, both for use by providers themselves to make sure they are achieving client objectives in a significant number of cases and meeting long-term community needs measured against compelling legal needs identified in providers planning process.

7. Technology

Effective use of technology to enhance the delivery of legal services is essential to achieve the goals of this State Plan. Strategic technology initiatives also are at the core of plans being advocated at the national level by the Legal Services Corporation, the State Justice Institute, Access to Justice Commissions, and the American Bar Association.

There also is increasing need to ensure these systems are adaptable to the expanding new generation of mobile devices. A 2012 national Pew survey showed that for many self-represented litigants, a cell phone may be their only readily available Internet access point. According to that same survey, this is particularly true for people “under the age of 30, Black and Latino users, and people with lower income and education levels.” Text messaging, responsive web designs to deliver content to mobile devices, specialized apps or tools for use on smart phones, and other strategies to better integrate the use

of mobile technologies in providing forms, information and resources to low-income New Mexicans are increasingly crucial to the effective delivery of resources.

However, there are also sobering cautions that technology is not a panacea to resolve all the staffing and funding challenges faced by legal services programs today. See, e.g., "NM's Daunting Digital Divide, Albuquerque Journal, 02/24/2013. According to this article, New Mexico has a well-documented "digital divide" affecting significant portions of the state which still must rely upon "dial-up" and slow-speed DSL connections for internet. For some legal services clients, this is a clear example of how technology might not always be helpful and in fact might itself create unintended barriers to access to justice.

The 2014 State Plan therefore urges the adoption of appropriate and flexible new technological initiatives in the areas of service delivery methods, rural access to services, entry and intake, collaboration amongst providers, self-represented and *pro bono* services, and professional development as recommended below.

- a) Service delivery methods
Effective delivery of legal information and resources requires significant enhancement and on-going maintenance of a viable, responsive, up-to-date website that can be accessed through a multitude of technology venues, whether through desktop or laptop computers, cell phones and smart phones, tablets, live chat sessions, expert/smart questioning systems or similar emerging platforms and devices.
 - (1) A single statewide website such as lawhelpnewmexico.org should be developed and marketed as a trusted portal to resources for use by individuals, advocates and collaborating agencies. The website at minimum should provide the following services.

- (a) Information
A dedicated statewide website that can aggregate legal information in flexible formats targeted for those with a legal background or simplified to allow more grassroots understanding of complex legal information. At the most basic level, pro se brochures and manuals can be posted or linked to the website. The website also can offer information through multiple multi-lingual media, including videos, audio files, and interactive graphics.
- (b) Access
An effective web-based delivery system accessible to low-income persons regardless of time of day or geographic limitations. This would be especially helpful for low-income persons living in small communities with limited access to attorneys, or for low-income with limited English proficiency. In addition to home access, web-based resources are available at courthouse kiosks, libraries, and anywhere a client can obtain access to the Internet.
- (c) Multi-agency collaboration
A well-managed site that is an effective hub for collaboration among legal providers. Multiple agencies sharing development of web resources can cost effectively integrate components of intake, case management systems and general information. They can post pro bono opportunities, sample briefs, practice manuals, and calendars for self help clinics and outreach events. Information posted on a statewide website

can offer hyperlinks to other sources of information, as well.

(d) Outreach

A well maintained website can serve as a cost effective alternative to direct contact outreach. The ease of updating web-based resources also eliminates wasted bulk brochures when information becomes obsolete. Web-based resources also can expand the scope of distribution as friends, relatives, social service workers, librarians, teachers, etc., help steer low-income persons to needed information.

(e) Access to court forms and pleadings preparation

Web-accessible document assembly systems can help self-represented litigants create effective, properly formatted court forms and pleadings. Computerized templates can use branching logic to guide clients through the process of choosing the best responses needed for their case documents. Formal partnerships and training programs combined with web user metrics can continuously improve development of future automated documents.

(f) Branding

Low-income persons looking for free legal services are bombarded by a wide range of competing services many of which require payment or fees. The typical consumer can be tricked into using for-profit services with such words as "free" or "legal" in their website names. A well maintained

statewide website can establish a trusted portal for access to free services from legitimate partners.

Other service delivery methods are incorporated below.

b) Rural access to services

Remote delivery of legal services can reduce the costs of connecting legal service or pro bono attorneys and paralegals to clients and improve the likelihood that low-income persons will receive high-quality legal assistance regardless of their location. New Mexico's legal service providers should use technology to create a presence, virtual or otherwise, in rural, underserved areas through increased use of alternatives to face-to-face service delivery, including the following.

- (1) Telephonic services (as is presently provided by the lead intake agency, Law Access New Mexico)
- (2) Video conferencing between attorneys, support staff and clients to create a more personal contact environment than is afforded via exclusive telephone contact, including translation services
- (3) Establishment of community relationships to allow 'hosting' of equipment and scheduling of attorney-client "meetings"
- (4) Engaging with the courts to implement court video-appearances by both counsel and litigants

Use of technology in rural, underserved areas, however, must include consideration of New Mexico's "digital divide" by planning for technology services that include multi-faceted approaches to the delivery of services; websites designed with multiple display formats responsive to slower internet services (e.g., text-based pages that load without embedded media).

c) Entry and intake

The state intake system must keep abreast of emerging trends in enhancing intake procedures and keep the other service providers informed of these procedures.

One significant trend is for development of enhanced online intake systems that include expert knowledge systems, "smart" checklists, and triage systems that more intelligently guide an applicant for services through series of questions that will better identify the most appropriate service available to the applicant. Information about the use of expert and triage systems is available at: <http://tig.lsc.gov/guidance-expert-systems>; <http://www.palegalaid.net/news/plan-e-news/two-more-lsc-tig-recipients-successfully-launch-online-intake-and-triage-portals>).

The New Mexico legal services delivery system should pursue opportunities to develop such systems responsive to its needs and the needs of its clients.

d) Collaboration among providers

Technology systems no longer need to be housed within a local office environment or be exclusive to only one organization in order to effectively, affordably and securely meet the needs of a community of service providers. Computer networks accessible through a cloud infrastructure, shared hosting of on-line resources, portal systems for issue-oriented work groups, and multi-platform mobile networks are just a few examples of available technologies that can allow a coalition of providers to achieve high quality at a fraction of the costs they otherwise would face to develop and operate these systems on their own.

Civil legal services providers in New Mexico should explore opportunities to take advantage of these new options, including the following collaborations.

- (1) Shared IT support staff, allowing higher levels of expertise at lower costs than would occur if each organization continues to hire its own independent IT staff or contractors
 - (2) Shared Voice Over IP telephone networks and shared bandwidth resources
 - (3) Shared cloud-based resources for common needs such as word processing, financial systems and case management databases, and secure portals for case collaboration and issue-based work groups
 - (4) Shared development of on-line expert knowledge management systems
 - (5) Shared hosting and development of web site resources
 - (6) Shared development of mobile-friendly community education and legal information resources
 - (7) Enhanced multi-agency on-line intake systems
 - (8) Shared social media and on-line marketing/communications/"branding" strategies
 - (9) Shared technology resources with institutional partners such as the courts and universities, with other social services providers, and with the private bar
- e) Self-represented litigant services
The technologies discussed earlier are also essential tools to efficiently expand access to the courts for self-represented litigants (SRLs) through such mechanisms as the following.

- (1) Triage and expert systems to help identify appropriate court proceedings
- (2) Document Assembly services to prepare court pleadings
- (3) E-filing
As the courts expand use of e-filing, pro se litigants should not be denied access to participation in e-filing; courts should adopt mechanisms and procedures, including the waiver of fees for indigent self-represented litigants, to assure that pro se litigants have the option to use e-filing to obtain the advantages afforded by its convenience;
- (4) Remote service delivery option
- (5) Mobile technologies
Services, forms and assistance can be provided via mobile devices like smart phones and tablets. For many SRLs, a cell phone may be their only available Internet access point.

f) *Pro bono services*

While the Commission has close working relationships with the 16 local *pro bono* committees located across the state, there are two primary technological strategies that could improve the effectiveness of the ongoing *pro bono* projects in New Mexico.

First, increased use of internet-based video chat services, such as Skype, would permit lawyers in Albuquerque to meet with clients in rural areas without having to invest the time and expense for travel. This strategy was piloted in September 2012 in Mosquero, New Mexico. Albuquerque lawyers gathered at the Metropolitan Court and met via Skype in a virtual law

fair with clients at Mosquero High School. More work needs to be done regarding building relationships with institutions such as libraries, courts, and schools throughout the state in order to develop locations for virtual law fairs or consultations with pro bono lawyers doing direct representation of rural clients.

Second, the Commission's *pro bono* working group should support development of an improved internet-based client referral system for pro bono attorneys in the Volunteer Attorney Program (VAP), which could streamline the amount of time needed for direct involvement by VAP staff.

- g) Professional development
Currently, New Mexico's legal service providers are able to avail themselves of an annual two-day training conference in areas of substantive law, professional ethics, and practice management skills. While a single annual two-day conference can meet some of the needs for professional development, it cannot provide a full range of professional topics for either substantive or professional skill topics.

Various agencies most likely conduct in-house discussions or trainings that rise to the level of substantive training. Agencies should be encouraged to video-tape these discussions / trainings and make them available via the statewide website to other agencies.

At the national level, organizations such as the National Legal Aid and Defender Association (NLADA), Management Information Exchange (MIE) and the Sargent Shriver National Center on Poverty Law have developed training programs, curricula and delivery models that help address some of the existing training needs. A consortium of New Mexico Legal Service Providers could subscribe to these training programs

and then share them with the providers who have joined the consortium.

New Mexico's Volunteer Attorney Program also conducts substantive law trainings for volunteer attorneys who agree to sign up to take a pro bono case. These trainings could be video recorded and posted to a secure website to be available for staff of the legal service providers.

E. Self-Represented (Pro Se) Litigants

Coordination between the self-represented litigant programs, the legal services providers, and the *pro bono* programs is essential for the effective administration of justice.

1. Introduction

The 2014 State Plan recognizes the leading role of the judicial branch in providing a basic level of core services to self-represented litigants (“SRLs”). These basic services are essential to self-represented litigants’ ability to present their cases in a manner that is both procedurally effective and that is appropriate to the merits of their case. Collaboration among the judicial branch, legal service providers, the private bar and other is critical to serving the needs of SRLs.

2. The Needs of Self Represented Litigants

The 2007 State Plan, the SRL working group’s Report to the Commission, and the experience of the current SRL working group all recognize that some of the most common areas of civil legal need for self-represented litigants are: domestic relations, domestic violence, housing, and probate issues.

The major barriers identified as inhibiting access to justice for SRLs were the following: courts overwhelmed by number of SRLs; inconsistent assistance to SRLs from district to district; SRLs’ inability to understand civil procedure; language access; reluctance of private bar to assist SRLs through unbundled representation; and other factors.

- a) Since 2006, the judiciary, civil legal service programs, and the state bar have taken extraordinary steps towards addressing these barriers, including:
 - (1) Adopting and transforming statutory forms as computer based interactive forms available on the internet.
 - (2) Since 2006, court based self-help centers and “ask-a-lawyer” workshops have increased statewide to provide procedural direction to those seeking help.
 - (3) The Administrative Office of the Courts now provides certified interpreters for proceedings, training of court employees as language access specialists, and twenty-four hour telephone access to interpreters in more than fifty languages. With these programs the language barriers that inhibited the SRL from using the court efficiently are now markedly decreased, if not removed.
 - (4) Each judicial district has developed its own *pro bono* committee to coordinate efforts within each judicial district to assist low-income and self-represented court users. Many of these committees have partnered with local bar members to increase services to low-income and self-represented litigants.

3. Measuring Progress

- a) Increase funding for services to SRLs to both the judicial branch and civil legal services providers. With adequate funding, the judicial branch and civil legal services programs can more effectively assist self-represented litigants and can fully implement existing programs designed to help SRLs.

- b) Bring the executive branch into the access to justice arena. Collaboration between the executive and judicial branch is crucial to globally address the common areas that directly affect the needs of self-represented litigants. While these common areas certainly include funding, they also include bringing the executive branch into the access to justice arena, perhaps involving a deputy level official from an executive agency as a Commissioner. This seat should be permanent to ensure a consistent dialog regarding issues facing SRLs between branches of government. Examples of overlapping issues include consumer protection and identity theft.
- c) Explore alternative procedures to provide fairness and legal accuracy to SRLs. Access- friendly solutions may include self-help centers, court staff education, informational websites, and programs of discrete task or limited representation. Exploration of alternative procedures includes making case-specific pro se dockets for divorce, parentage and child support cases.
- d) Educate private attorneys on the benefits of collaboration with nonprofit organizations and civil legal services programs. In addition to ongoing and continuing efforts to encourage members of the private bar to take cases for limited and pro bono representation, this program should also include educating private attorneys on the benefits of collaboration with nonprofit organizations and civil legal services programs. Further, the Commission should partner with the State Bar of New Mexico to expand efforts to provide free CLE classes to those attorneys providing pro bono services, as well as exploring awarding CLE credits for pro bono hours actually performed.
- e) Acceptance of statewide forms within a reasonable period of time to bring uniformity between the judicial districts. These forms should be made available to self-

represented litigants through all courts as well as through official websites.

F. Pro Bono Services

Coordination between the courts, the private bar, legal services providers and other interested parties to provide *pro bono* services to low income people is essential for the effective administration of justice.

1. Introduction

Pro bono representation, uncompensated legal services preformed for the public good, is an important component of New Mexico's state access to justice system. In March 2006, the Supreme Court received and accepted the recommendations contained in the Ten Step Plan for Improving Access to Justice (the *Pro Bono* Plan), which was submitted by the Commission and approved by the State Bar's Board of Bar Commissioners. The *Pro Bono* Plan was incorporated into the 2007 State Plan, including the ten steps divided into three central elements: 1) involvement of the Judiciary; 2) changing the Rules of Professional Conduct and Minimum Continuing Legal Education; and, 3) expanding *pro bono* participation. A step-by-step analysis of the *Pro Bono* Plan in 2012 appears below.

2. The New Mexico Ten-Step Plan for Improving Access to Justice

a) Involvement of the Judiciary

(1) Step One

The Commission recommended the Supreme Court assume general oversight of the Pro Bono Plan and appoint the Commission to receive and evaluate reports and requests on its behalf and report its findings back to the Supreme Court. The Supreme Court has received annual reports from the Commission as well as from local pro bono committees since 2007. These reports are posted on the Commission's web page.

(2) Step Two

The Chief Judge in each judicial district was charged with establishing a *pro bono* committee for the district. Each local *pro bono* committee was charged with creating a plan to address opportunities for licensed attorneys to provide volunteer representation to low incomes New Mexicans. By 2012, fifteen of the sixteen districts (including three separate committees in the Fifth Judicial District and two separate committees in the Eleventh Judicial District) have established local *pro bono* committees.

(3) Step Three

The Supreme Court supported efforts taken through the Commission to identify and obtain funding to support the *Pro Bono* Plan implementation, including the establishment of the first ever, statewide *pro bono* coordinator housed with the State Bar Foundation. The coordinator has been instrumental in overseeing the development and activities of the local *pro bono* committees.

(4) Step Four

The issue of SRL services was incorporated into a separate working group of the Commission, which issued a separate report regarding SRLs, contained in the SRL section of the 2007 State Plan.

b) Changing the Rules of Professional Conduct and Minimum Continuing Legal Education

(1) Step Five

Accurate reporting of *pro bono* hours was identified in the Ten Step Plan for Improving Access to Justice as a key benchmark for determining the efficacy of *pro bono* activities. Consequently, the Supreme Court revised Rule 16-601 NMRA and added the new Rule 24-108 NMRA mandating annual reporting of *pro bono publico* hours. The commentary to Rule 24-108 NMRA notes that while provision of *pro bono publico* representation is not mandatory, attorneys are required under the rule to annually report their hours and failure to report is akin to failure to pay bar dues or complete continuing legal education.

(2) Step Six

This step suggested setting an aspirational target for *pro bono publico* service of at least fifty hours or a \$500 suggested contribution to support organizations that provide legal services to persons of limited means in New Mexico. The suggestion was adopted by the Supreme Court in 2008 with the revision to Rule 16-601 NMRA and the new Rule 24-108 NMRA.

(3) Step Seven

The Commission proposed a rule change to the MCLE Rule 18-201NMRA seeking to create an incentive for attorneys who provide *pro bono* service to low-income citizens. The rule change

would provide CLE credit for *pro bono* hours contributed by attorneys as an additional way to fulfill self-study credits. The Commission and the MCLE Board have discussed this proposal but have been unable to reach an agreement. The Commission will continue to work on a modified proposal that meets some, if not all, of the MCLE Board's objections.

c) Expanding Pro Bono Participation

(1) Step Eight

The Commission partially fulfilled the recruitment mandate in this step by implementing a Volunteer Attorney Pool (VAP) in the Second Judicial District and empowering the *pro bono* coordinator and local *pro bono* committees' efforts to recruit volunteer attorneys statewide. This will be an ongoing effort of the Commission. In 2011, the Committees, implementing the *Pro Bono* Plan, had 557 attorneys assisting 12,652 individuals, up from 7,300 in 2010.

(2) Step Nine

This Step called for the creation of an internet-based *pro bono* case recruitment program via a website or email. The VAP partially fulfills this goal. The *pro bono* coordinator and New Mexico Legal Aid will continue efforts to increase the number of attorneys participating in the VAP as well as to expand its geographical reach.

(3) Step Ten

The final Step calls for the promotion of *pro bono* among law students, new lawyers, and law firms. *Pro bono* is emphasized in the State Bar's mentorship program for new lawyers. Both new lawyers and law students are encouraged to participate in the VAP. The local *pro bono*

committee in San Juan County is engaged with the University of Denver School of Law's Alternative Spring Break program where law students participate in *pro bono* activities in San Juan County during spring break. The Commission will continue to implement this Step.

3. Measuring Progress

The Commission has several aspirational goals regarding further development of *pro bono* services.

- a) A primary goal of the Commission is to increase the size and geographical reach of the VAP so as to provide more direct representation to low income New Mexicans, especially in rural and other under-served areas. Law fairs and other limited *pro bono* services are worthwhile but many clients need access to full or limited representation by counsel.
- b) There is substantial need in New Mexico for greater access to legal information regarding poverty law issues. Increased continuing legal education opportunities for *pro bono* attorneys and up-to-date forms and procedural flow charts are necessary additions to the Commission's *pro bono* efforts. These materials would also support the efforts to improve access to justice for self-represented litigants. The Commission's ongoing efforts to include libraries in distribution of these materials will continue.
- c) The Commission will continue to encourage government and emeritus attorneys to provide *pro bono* services under the limitations of any applicable rules.
- d) The Commission will continue to support the *pro bono* coordinator's efforts to support local *pro*

bono committees with legal services providers. The work of these Committees, especially in collaboration with legal services organizations, is the primary methodology for increasing *pro bono* representation across New Mexico.

G. Funding the State Legal Services System

To ensure that every eligible person actively seeking legal assistance receives an appropriate legal service, sufficient funds for the legal services system should be secured. To this end, the Commission urges all funders of civil legal services to use this 2014 State Plan as a guide in prioritizing, coordinating and allocating funding among programs and providers.

1. Introduction

The current goal is to fund the execution of the 2014 State Plan. Stated differently, the goal is to increase the availability of free civil legal services to low income persons in New Mexico by funding legal service providers for whom that is their mission.

Specifically, the Commission will work to encourage funding that addresses all forms of legal services as provided for in the 2014 State Plan including working with the legal services providers, the State Bar and others to ensure that funding from New Mexico State government adequately addresses the unmet legal needs of New Mexico residents.

Likewise, the Commission will support efforts that encourage, at a minimum, the maintenance of funding from the federal government and private entities other than legislative appropriations, at current levels and, ideally, increase much faster than inflation.

Further, the Commission will encourage legal services providers to work together in seeking funding from the private, legal, and general public sectors.

2. State Funding

Highest priority should be given to obtaining state funding for the system. The Commission should:

- a) Support efforts to obtain recurring legislative appropriations to the CLSC. For the foreseeable future, legislative appropriations will continue to be the primary means for obtaining funds to build a sustainable civil legal services system;
- b) Support efforts to ensure the continued funding of the CLSF and CLSC through the surcharge on civil filing fees;
- c) Encourage state agencies to contract with existing legal services providers whenever these agencies propose to use state or federal funds to obtain civil representation for low income persons;
- d) Encourage the CLSC to use the 2014 State Plan to guide all of its actions;
- e) Ask other state and private funders to use the 2014 State Plan as a guideline in allocating their grants;
- f) Encourage the development of new sources of state funding;
- g) Support all efforts by the State Bar and other appropriate organizations to develop new ways to support civil legal services; and,
- h) Ensure that all providers that received funding through the CLSC are also participating in organized efforts to protect and/or increase the funds.

3. Federal Funding

The Commission should support the following federal funding efforts.

- a) Larger Congressional appropriation for the LSC. Each year, the Commission should support the appropriation recommended by the LSC Board of Directors.
- b) Removal of Congressional restrictions on LSC recipients. The Commission should actively support efforts to remove or modify selected restrictions on LSC funds.
- c) Continued funding from other federal sources. The Resource Development working group should actively support efforts by legal service providers regarding receipt of New Mexico's share of federal program funding.

4. NM Supreme Court's Consolidated Civil Legal Services Fund

Certain funds supporting delivery of civil legal services to low income New Mexicans are generated under rules adopted by the Supreme Court. This fund is known as the New Mexico Supreme Court Fund for Access to Justice ("Fund"). The Fund includes (i) pro hac vice fees collected by the State Bar from non-admitted attorneys appearing *pro hac vice* in civil cases before state courts; (ii) financial contributions to support legal services from licensed New Mexico attorneys in lieu of or supplementing *pro bono* service by attorneys made through the annual Bar Dues form); and (iii) interest on lawyer trust accounts ("IOLTA").

Pursuant to the December 22, 2014, order of the Supreme Court (please refer to Appendix D) the Fund revenues are consolidated for disbursement through the State Bar/Bar Foundation (State Bar).

- a) The Commission will ensure that the State Bar, as administrator of these funds, keeps administrative costs at a reasonable level and will recommend to the Court whether the budgets of the Court-controlled funds should be approved.

- b) The Commission working with the Supreme Court and the State Bar will seek ways to encourage attorneys to either provide *pro bono* legal services to persons of limited means in New Mexico or funds in lieu of such service either through the financial contributions to support legal services provided for in the annual dues and license form or directly to legal services providers who are funded through the CLSC.
- c) The Commission should also reexamine all court rules periodically for opportunities to increase the availability of resources for the CLSC.

5. Fundraising by Legal Services Providers

In an effort to reduce the administrative burden and costs of raising funds by individual legal services providers or groups of legal services providers, the Commission should encourage the following.

- a) A collaborative effort by all legal services providers to jointly raise funds from members of the State Bar and other New Mexico legal providers, so as to minimize the administrative burdens and costs of such efforts by individual or groups of individual legal service providers.
- b) Collaborative efforts by legal services providers to raise funds from the general public.

Such efforts will also serve as a means of enlisting support from the legal profession and the general public when legal services funding from the government sector are under consideration (i.e. legislative appropriation process).

6. Private Funding

The Commission should encourage legal services providers to actively identify and seek funding from private foundations and other institutional funders, working collaboratively with one another, to diversify their funding base and improve the

possibilities of attracting such funding. So, too, the Commission should educate and encourage all funders based in New Mexico and/or other funders interested in issues of high importance to New Mexico to make long term commitments to support civil legal services for the poor.

7. Other Funding

- a) **Federal Court *Pro Hac Vice* rule**
The Commission should continue to seek opportunities to approach the United States District Court for the District of New Mexico regarding possible expansion of the registration requirement to include non-admitted lawyers appearing in civil cases before that court or other possibilities of generating legal services support through pro hac vice fees for appearances in federal court.
- b) **Class Action Residual Funds**
The Commission, through the Resources Development working group will encourage the State Bar, CCV and legal service providers to cooperate in developing programs and materials to inform lawyers and trial courts of the opportunities to support delivery of civil legal services to the less fortunate through distribution of class action residual funds and to encourage distributions of residual funds for this purpose.
- c) **The Commission will also encourage individual providers to watch for and monitor class actions related to their particular missions and for which they should educate and encourage all funders based in New Mexico, or other funders interested in issues of high importance to New Mexico, to make long term commitments to support civil legal services for the poor as particularly well suited beneficiaries of residual fund distributions.**
- d) **The Commission should encourage funders to develop similar applications, guidelines and requested**

documents to lessen the administrative burden on the providers in requesting funding.

H. Quality Review

1. Legal Services Provider Evaluations

There should be both external and internal evaluations of providers.

The external evaluations include the annual evaluations performed by funders of individual programs, e.g., the LSC, the CLSC and United Way for each of its grantees.

2. Evaluation of the System

The evaluation of the legal services system's implementation of the 2014 State Plan and the ABA principles will be overseen by the Commission. It is recommended that the Commission through its working groups participate in on-going evaluation of the implementation of the 2014 State Plan. This will be accomplished by routine discussion of the 2014 State Plan at Commission meetings, in the working groups, and a periodic review by the Systems Planning working group.

In an effort to assure that the system is meeting the needs of the community, providers are required to submit an annual report to the Commission setting forth the numbers of individuals served, the level of service provided, the location of the client/case and the substantive area of law the service was provided in. The providers will utilize consistent problem codes and closing codes. The due dates and format for reporting this data will be developed by the Systems Planning working group and distributed to all providers.

A. Professional Development and Training

The provision of high quality and effective assistance to New Mexico's indigent population requires both statewide coordination of professional development and training and individual legal service program instruction for their attorneys and advocates.

1. Introduction

The 2014 State Plan recommends that a lead agency provide statewide training and professional development in substantive areas, advocacy skills, and personal development. The lead agency should also be responsible for system coordination in this area utilizing input from all legal services providers and exploring the use of available technology. The lead agency responsible for this training and professional development is currently the Access to Justice Coordinator at the State Bar.

2. Implementation

The lead agency should focus on providing training or coordinating with local, regional or national efforts in a range of instruction, from basic to advanced, in the following areas:

- a) **Substantive Law Areas**
Training should respond to the legal services provider's specific needs and should be tailored to the priority areas of the providers and their current substantive work. Training should address emerging legal issues and devise creative and new approaches to addressing problems facing low-income communities.
- b) **Advocacy Skills**
Basic skills necessary to serve clients and others effectively, including trial skills, use of discovery, fact-finding techniques, negotiation, and interview techniques. Instruction in the advocacy skills area should reference the specific ABA standards for the specific skills.
- c) **Personal Development**
For attorneys, advocates, and support staff in areas of time management, organization, prioritizing tasks, adaptability, judgment, and communication skills including empathy, courtesy, and cultural sensitivity.

- d) Management and Leadership Development
Knowledge and skills to assist in the operation of the agency, including manager, supervisor, accounting, and human resource training. Also support in the development of emerging and existing leaders, leadership training, and training for trainers.

3. Coordination and Input

The lead agency should promote coordination and the opportunity for input from the legal services providers in developing a statewide training and professional development plan. All legal service providers should contribute to the planning of the statewide training. Meetings will be held by the lead agency to obtain input from the providers and to develop the topics and presenters. The lead agency should be responsive to the needs of the civil legal services providers in selecting the training presented.

VIII. CONCLUSION

A tremendous amount of work went into the 2014 revisions to the State Plan. The Systems Planning Working Group met monthly over a three year period and the Commission reviewed and gave feedback on the revisions in detail. In the time it has taken to revise the plan and get feedback from the many stakeholders involved the situation on the ground has continued to evolve: what were innovations at the start of this process are now mainstays of the system. It is the fervent hope of the people involved in completing this revision that New Mexico's civil legal services system will continue the rapid pace of progress we have seen in the past nine years since the New Mexico Supreme Court established the Commission on Access to Justice, and that all stakeholders continue to work together with the same energy and passion to expand access to justice for all low-income New Mexicans.

APPENDICES

Appendix A – Supreme Court Order 04-08300, 2004

ATTEST: A TRUE COPY

Kathleen J. Gibson
Clerk of the Supreme Court
of the State of New Mexico

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IN THE SUPREME COURT OF NEW MEXICO

NO. 04-8300

SUPREME COURT OF NEW MEXICO

FILED

IN THE MATTER OF THE ESTABLISHMENT OF THE
NEW MEXICO COMMISSION ON ACCESS TO JUSTICE

MAY 28 2004

ORDER

Kathleen J. Gibson

WHEREAS, this matter came on for consideration by the Court upon recommendation of the Civil Legal Services and Program Committee of the State Bar of New Mexico to create a New Mexico Commission on Access to Justice;

WHEREAS, approximately one quarter of the population in New Mexico lives at or below the federal poverty standard for receiving legal services assistance;

WHEREAS, New Mexicans living in poverty have a variety of legal needs in areas such as family law, housing, consumer affairs, employment, health, community issues, wills, and public benefits;

WHEREAS, by some estimates at least 60% of the legal needs of those living in poverty are unmet;

WHEREAS, New Mexico ranks among the bottom twenty states in spending on legal services per poor person;

WHEREAS, the inability of poor people to gain meaningful access to the civil justice system is of concern to this Court, the judiciary, the legal profession, and the citizenry of the State;

WHEREAS, this Court is committed to the ideals expressed by Justice Lewis Powell, Jr., that equal justice under law is not merely a caption on the facade of the Supreme Court building; it is fundamental that justice should be available without regard to economic status; and the Court having considered said recommendation and

1 being sufficiently advised, Chief Justice Petra Jimenez Maes, Justice Pamela B.
2 Minzner, Justice Patricio M. Serna, Justice Richard C. Bosson, and Justice Edward L.
3 Chávez concurring;
4

5 NOW, THEREFORE, IT IS ORDERED that the New Mexico Commission on
6 Access to Justice HEREBY IS ESTABLISHED as an independent, statewide body
7 dedicated to expanding and improving civil legal assistance in New Mexico;

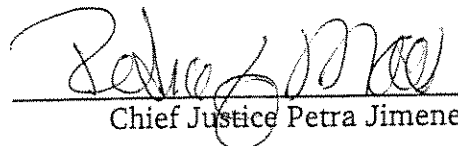
8 IT IS FURTHER ORDERED that the Commission shall consider relevant topics,
9 including expansion of resources, increased public awareness through communications
10 and message development, pro bono matters, and other areas including training and
11 technology;
12

13 IT IS FURTHER ORDERED that the New Mexico Commission on Access to
14 Justice shall meet to organize and meet, thereafter, as necessary at the call of the co-
15 chair persons or at the request of a majority of the committee members; and

16 IT IS FURTHER ORDERED that the Commission shall be composed of eighteen
17 (18) members representative of the bar, judiciary, and legal aid providers.
18

19 IT IS SO ORDERED.

20 Done at Santa Fe, New Mexico, this 28th day of May, 2004.

21 
22 _____
23 Chief Justice Petra Jimenez Maes

24 
25 _____
26 Justice Pamela B. Minzner

27 
28 _____
Justice Patricio M. Serna



Justice Richard C. Bosson



Justice Edward L. Chávez

Appendix B – Brief History of Legal Services

This section contains a brief overview of the origins and context of five of the key issues addressed in the 2014 State Plan.

1. Overwhelming caseloads
2. Priorities for the delivery of legal services
3. Demise of “federal legal services”
4. American Bar Association standards
5. Access to Justice commissions

1. Overwhelming Caseloads

The original vision of legal services, developed by the Office Economic Opportunity (OEO) Legal Services Program in the mid-1960’s, called for the following.

“A system to provide lawyers to every poor person with a legal problem” delivered via “neighborhood offices” in which “each indigent would be handled by one attorney that he could return to if he ever had another legal problem”, augmented by “specialists in housing, consumer and other substantive areas... who could give the client the benefit of the same assistance a Wall Street firm might afford one of its clients”, all with the goal of making “the law serve rather than oppress the poor.”

This vision was abandoned in early 1967 when Earl Johnson, the Director of the OEO Legal Aid Program, announced a new vision that stated the following.

“We cannot at the same time provide every indigent with a lawyer, treat all his problems legal and personal, work devotedly to change the statutes and court holdings that have placed our clients in a disadvantageous position, and develop the theories to win the battles of today and tomorrow...[Instead we

must adopt a new goal] “law reform...to bring about changes in the structure of the world in which poor people live in order to provide on the largest possible scale consistent with our limited resources a legal system in the which the poor enjoy the same treatment as the rich.”

Johnson’s new vision was caused by the immediate acceptance of the new “legal services projects” in low income neighborhoods. Every legal services office was overwhelmed with applicants virtually from the day it opened its doors.

While many legal services providers responded enthusiastically to Johnson’s new vision, overwhelming caseloads continued to be a problem. In the early 1970’s, during the time Congress was considering the Legal Services Corporation Act, the National Legal Aid and Defender Association (NLADA) funded a major effort to control caseloads. As documented in a manual titled “Too Many Clients, Too Little Time” the recommended method called for providers to set “goals”—what we now call “outcomes”—that described, ideally in measurable terms, precisely what they intended to change in the communities they served. Applicants whose need could not be accommodated within one of provider’s goals were turned away. The method proved to be an effective way of focusing provider’s activities and reducing caseloads.

2. Priorities for the Delivery of Legal Services

A somewhat different version of “Too Many Clients, Too Little Time” was codified in a Regulation issued by the new LSC in 1978. The Regulation required LSC grantees to set “priorities for the delivery of legal services” by first conducting a “needs assessment” to identify the “most important” legal problems in the communities served, and to then use that information to prepare a list of substantive issues—such as “housing”, “consumer”, “special education”, etc.. These “priorities” would both the focus of the program’s efforts and be the justification for turning away eligible applicants. The Regulation substantially reduced caseloads, but also had the effect of making legal services providers less responsive to emerging needs, and led to massive numbers of applicants being denied assistance each year.

In 1997, Congress further tighten priorities, requiring LSC grantees to document every case taken that did not fit within one of its priorities. Fortunately, Congress also prohibited further funding of the “specialists” in the original vision—now called “state and national support centers”—in hopes of eliminating “law reform”. But to no avail: the vast majority of the state and national centers became public interest law firms that – now freed from LSC restrictions – could and did address a wide variety of substantive law issues affecting hundreds of thousands of poor people.

3. The Demise of “Federal Legal Services”

The intent of the designers of the OEO Legal Services Program was to create a single system of legal services in which a federal agency—the OEO—would directly fund local legal services providers. The federal-local relationship was intended to ensure that Governors in southern states could not block funds to legal services programs addressing civil rights issues.

The OEO controlled its system via its power to fund its vision, by its grants to “specialists”, and by its control of research, training, and provider support. This system came to be known as “federal legal services” even though, in 1974, its functions were transferred to a nonprofit corporation—the LSC—that was (and is) not a federal agency.

Central control proved to be remarkably effective. By 1979, poor people in every county in the US had access to an LSC funded provider, all using priorities to control caseloads, and all linked to the specialists that continued to address legal needs affecting large numbers of poor people.

Federal legal services began to crumble in the early 1980’s when restrictions imposed by the Reagan administration led to the creation of non-LSC providers in some states. More importantly, courts and legislatures created Interest of Lawyers’ Trust Accounts (IOLTA) programs, a new source of funding that stimulated the creation of hundreds of new, non-LSC providers.

Central control was fatally weakened when Congress further restricted the LSC in 1996, leading many LSC programs to spin off their now prohibited activities to new providers. The final blow was dealt by the remarkable amounts of money that became available when IOLTA became mandatory

and banks were required to pay substantially higher interest on lawyers' trust accounts. By 2008, nearly every state had more non-LSC than LSC providers, and the states where lawyers handled real estate transactions, and therefore held very substantial amounts in their trust accounts, were funding their legal services providers at levels at least ten times higher than the states that continued to depend on LSC funding.

In the end, the single, centrally controlled system was replaced by, at best, a state system controlled by its IOLTA funder, or, more commonly, by a hodge-podge of providers, all fiercely competing for insufficient resources and therefore strongly disinclined to work together.

The LSC sought to bring order to this situation by "consolidating" its grantees. Between 1998 and 2003, the number of LSC grantees was cut in half. But the LSC had no influence over providers it did not fund, so the result of its effort was fewer providers but no better coordination of services across provider boundaries.

Much more effective were the efforts of bar leaders and the courts to resurrect the concept of a single, coordinated system of civil legal services, controlled at the state, rather than national, level. As early as 1996, bar and court leaders in New Mexico and other states began to create delivery systems that were more responsive to local needs in which all providers—LSC and non-LSC funded—worked together to address the most serious issues faced by low income people. Their efforts were institutionalized in what came to be called "Access to Justice Commissions" and codified in standards issued by the American Bar Association in 2006.

4. American Bar Association Standards

The ABA became a player in the legal services movement in the early 1920's when it created what is now called the Standing Committee on Legal Aid and Indigent Defendants (SCLAID). That Committee periodically issued standards for legal services. The two that still matter are those issued in the mid-1980's and in 2006.

The mid-1980's Standards were intended to protect LSC grantees from a hostile LSC Board. These Standards documented the system developed in the 1960's and 70's and, in effect, prohibited the LSC from making major changes in this system. These Standards, augmented by lobbying by the

ABA and NLADA, accomplished their purpose: the LSC board was unable to make any major changes in its grantee's activities. But they had an unintended effect: the mid-1980's delivery system was frozen in place. A system once noted for innovation became stubbornly resistant to change in the way it delivered services.

The 2006 Standards, developed by a SCLAID Committee chaired by Sarah Singleton, confronted the now well entrenched legal services delivery system by laying out a challenging vision of a "comprehensive, coordinated, statewide" legal services system. In place of many local providers fiercely competing for resources, it required providers to participate in a coordinated system delivery legal services in every part of a state. In place of an excessive focus on individual representation, it required each state to offer "full range" of legal services, including "systemic advocacy," "affirmative advocacy" and "legislative and administrative advocacy", and required providers that did not engage in these activities to coordinate with providers that did so engage.

The SCLAID Standards were augmented by the 2006 ABA Principles of a State System for the Delivery of Civil Legal Aid prepared by a Task Force chaired by Justice Howard Dana of the New Hampshire Supreme Court. The Principles contained a goal and a set of principles for states. The goal is that a state's system for the delivery of civil legal services should provide a full range of high quality, coordinated and uniformly available civil law-related services to the state's low-income and other vulnerable populations...in sufficient quantity to meet their civil legal needs.

The document goes on to say a state's system for the delivery of civil legal services achieves the goal if it does the following.

- A. Provides a full range of services in all forums. A full range of services includes information about legal rights and responsibilities; outreach and community legal education; legal advice and brief services; support and assistance for people capable of representing themselves; representation in negotiation and alternative dispute resolution; transactional assistance; representation in administrative and judicial proceedings; extended representation in complex litigation and on systemic issues; and representation before state and local legislative and administrative bodies.

- B. Makes services fully accessible and uniformly available throughout the state.
- C. Engages and involves the judiciary and court personnel in reforming their rules, procedures and services to expand and facilitate access to justice.
- D. Engages in statewide planning and oversight of the system...

The Principles conclude with the following.

Due to fundamental changes in the national civil legal services system, the organized bar and state Supreme Court and other judicial leaders...must take the lead to achieve access to justice in civil matters...State Access to Justice Commissions have proved to be a successful and effective model for institutionalizing bar and judicial leadership and support.

5. Access to Justice Commissions

The *Preface* to the 2014 State Plan contains a brief history of New Mexico's efforts to create a civil legal services system that meets the needs of its low income residents, culminating in the creation of its Access to Justice Commission by the Supreme Court in 2004.

Three general points about New Mexico's Commission are the following.

- A. Its purpose has been to create a comprehensive, coordinated, statewide system of civil legal services. Many Commissions in other states, after years of focusing on increasing resources, are just beginning to pay attention to how providers are delivering services.
- B. It has been much more active, and had a broader range of interests, than almost any other Commission. In particular, the use of task forces led by Commission members but composed of providers, court personnel and private attorneys, has enabled the Commission to do more, quickly.
- C. Its use of plans to guide its activities, and its role in funding providers, is nearly unique.

Appendix C – Systemic Advocacy

Introduction

Systemic advocacy describes an array of critical strategies for serving the legal needs of large numbers of low-income persons. Civil legal service providers in New Mexico and throughout the country engage in systemic legal advocacy and the American Bar Association’s Standards for the Provision of Civil Legal Aid²⁵ (“ABA Standards”) identify systemic advocacy as an essential element of a coordinated legal services system. The 2013 State Plan recognizes the value of systemic advocacy and its role within the civil legal services system. Systemic advocacy is not merely a list of separate, ‘siloe’d’ services but an essential and integrated element of a coordinated system. Systemic advocacy often cannot be measured in the same way as is individual representation.

Systemic advocacy includes an array of strategies and activities that are designed to achieve broad and lasting results that address the legal needs of low-income communities. As ABA Standard 2.6 states:

A provider should strive to achieve both clients’ objectives and lasting results that respond to the low income communities’ most compelling legal needs.”

There are two underlying assumptions to this broader approach: (1) not everyone who has a legal need has, or will have, access to the legal help they need to seek a remedy; and (2) where possible we ought to prevent harm from occurring in the first place. Rather than address the discrete legal need of a specific client, systemic advocacy seeks to affect the institutional problem from which that individual need arises. This work is therefore both reparative and preventative. The commentary to ABA Standard 2.6 discusses the importance of the role of systemic advocacy in a civil legal services system:

In the course of serving its clients, a provider is likely to identify laws, policies and practices that have a detrimental effect on low income persons and that deter it from accomplishing desired results. It will also encounter the efforts of others to change policies and laws in ways that harm the interests of low income persons. A provider should engage, when

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http://www.legalaidnc.org/public/participate/legal_services_community/ABA_StandardsfortheProvisionofCivilLegalAid_Aug_2006.pdf (last visited 7/24/12).

appropriate, in advocacy that addresses such systemic problems. Advocacy to accomplish systemic change is called for when an issue is likely to recur, affects large numbers of clients and is unlikely to be resolved favorably for individual clients on a one-on-one basis. Advocacy is appropriate to defend the status quo when proposed changes will erode the rights of low income persons or harm the interest of low income communities.)

It is clear that systemic advocacy is not a luxury option to be exercised (or not) as a mere adjunct to individual representation. Rather it is a necessary component not only of the civil legal services system as a whole, but of the work of each provider within that system. That said, some providers will necessarily spend the bulk of their resources on individual representation, while others will concentrate on effecting systemic reform.

While some systemic work falls into both categories, the entities that oversee and fund the civil legal services system in New Mexico must recognize that the two types cannot be measured by the same traditional “closed cases” standard. A provider may represent a series of individual clients in cases involving eviction from a low-income public housing project, before concluding that a systemic approach to the problem – such as advocating for a change in a rule or its application - may best serve those in the low-income community *before* they need direct representation. Similarly, a new public benefits program policy could negatively affect a number of recipients who the provider represents in administrative hearings. Once the provider fully grasps the problem, it might employ both informal and formal administrative advocacy to ensure that others in the program are not harmed, avoiding the possibility of their needing to advance legal claims in the future.

The oversight entity must also recognize that some forms of systemic advocacy have a long arc in time, such that providers may spend years working to reform a single policy. Engaged in investigation, research, education and organizing around such a policy, the provider will not be able to report its progress in the traditional case opened or closed manner for several years, though the work eventually benefits thousands of clients. Thus, an improved system for reporting this kind of work is needed.

There are many types of systemic advocacy strategies; some are low cost and others require significant resources. While long-term systemic advocacy work may need to be performed by providers with that expertise and capacity, all

providers have opportunities to participate in relatively low-cost systemic advocacy. The commentary to ABA Standard 2.6 gives the following examples of systemic advocacy modalities:

1. Non-representational strategies, such as participation in bar and judicial commissions to improve access to justice for low-income persons;
2. Systemic impact in individual cases, by the intentional use of an individual case to highlight a policy or practice and use the case (or series of cases) to change that policy or practice;
3. Informal intervention in an administrative agency when the agency is misapplying the law or engaging in practices that limit access to benefits or rights among low-income persons;
4. Working in coalitions to address the needs of low-income communities;
5. Media advocacy;
6. Affirmative litigation - either to challenge or defend - existing laws or practices that impact the resolution of clients' legal problems;
7. Legislative advocacy; and,
8. Administrative advocacy (formal rulemaking proceedings).

ABA Standards at 68-69.

In New Mexico, providers engage in these and other systemic advocacy strategies - including community organizing around systemic advocacy issues and the use of amicus briefs in cases litigated by others - that raise important systemic issues.

Resources are too limited to expect any provider to provide all forms of legal services to all clients who need them. Moreover, while systemic advocacy has the potential for helping large numbers of clients resolve or avoid legal problems many funders restrict the means that providers can employ using their resources – especially as to certain types of systemic advocacy. The federal Legal Services Corporation, for example, prohibits recipients from engaging in lobbying and bars providers from participating in class actions. The New Mexico Civil Legal Services Commission currently bars the use of state funds for lobbying activities and for

lawsuits against the state.²⁶ The result is that providers are restricted from using their best judgment as to how to serve the low-income community. As the commentary to ABA Standard 2.6 explains: (P)articipants “in the larger delivery system should identify strategies to expand available resources, particularly resources that can be used to engage in representation that is restricted by other funding sources and to deploy those resources rationally throughout the system.” ABA Standards at 62. But when all the major funding sources for legal services programs restrict activities like legislative advocacy, class actions, or litigation against the government, providers’ ability to meet the needs of the low-income community are unnecessarily limited.

Thus, a coordinated system is essential to ensuring that the most effective strategies are used to meet the legal needs of low-income communities within available resources. First, coordination requires effective systems of communication among providers and between legal services providers and other organizations. Providers that are already under-resourced currently lack the ability to engage in the coordination and ongoing communication needed to ensure the most effective use of systemic advocacy. Second, funding sources must be sufficiently diversified so that despite the restrictions that some funders impose most providers are able to utilize the effective systemic advocacy modalities of their choice.

Inclusion of Systemic Advocacy in the 2013 State Plan

Given that the ABA Standards are well-recognized as the aspirational goal of legal services providers nationwide, the 2013 State Plan refers to and integrates them confident that it is on solid ground addressing systemic advocacy and its essential role in a coordinated system of legal services. Thus the State Plan incorporates systemic advocacy in discussing the types of legal services to be provided, defines and explains the types of systemic advocacy the ABA recognizes as essential to an effective legal services system, and addresses the role of coordination and communication to effect a comprehensive legal services system for New Mexico.

In addition to addressing systemic advocacy directly, as set forth in ABA Standard 2.6 and the accompanying commentary, the 2013 State Plan integrates the role of systemic advocacy in other aspects of the overall plan as appropriate. Several of

²⁶ It is important to note that some funders will not permit their beneficiaries from using any funds to engage in activities they prohibit. They view all grant monies as fungible. Therefore, if a provider agrees not to use the funds they obtain from Entity X for legislative advocacy, but wants to use what they get from Entity Y to do it, Entity X may well pull its funding entirely.

the other ABA Standards provide guidance on how to do this, including Standard 3.1 (Full Legal Representation), Standards 3.2 and 7.13 (Legislative and Administrative Advocacy), and Standard 7.16 (Representation of Groups and Organizations).

Specifically, the 2013 State Plan includes:

1. A new section explicitly devoted to the role of systemic advocacy as an essential element of the legal services system that best responds to the needs of the low-income community;
2. Integration of the role of systemic advocacy where appropriate throughout the Plan, particularly in the areas of system coordination, planning, evaluation and reporting;
3. Recognition that providers need to have the resources to participate in a strong coordinated system that includes the identifying and prioritizing the key systemic needs of low-income New Mexicans; and,
4. A recommendation that New Mexico's civil legal services funding sources eliminate all restrictions related to systemic advocacy, including legislative and administrative advocacy and litigation against the state, itself. Furthermore, the state funding sources must not view funds from other sources as fungible with respect to state funds. Thus, even if the restrictions are not lifted, state fund beneficiaries could secure resources to do systemic advocacy without jeopardizing state funds.

Evaluating and Reporting on Systemic Legal Advocacy

Evaluating systemic advocacy in the context of a civil legal services system presents several challenges as discussed above. Neither the traditional method of counting cases, nor the focus on a specific time period can effectively measure how well this type of advocacy serves the low income communities. Providers engaged in systemic advocacy must be able to report their work in ways that are more meaningful and that better enable evaluation of that work. Rather than numbers-based reporting, narratives better serve this purpose. Providers should be able to describe the many steps they take in working to effect broad change: community outreach and education; research, analysis and writing on the issue; meetings with policy makers; testimony in legislative or administrative hearings

and more. All of these efforts take place over extended periods of time and neither the amount of work nor its net effect can be measured numerically.

But these reporting strictures are not challenges only for organizations that focus on systemic advocacy. To meet the long-term legal needs of low-income clients and communities, it is essential that all providers establish a strategic focus and long-term goals for their work that include systemic advocacy. Some specialize in areas of the law, such as housing or public benefits; others address the needs of particular populations, such as immigrants, Native Americans or persons with disabilities. This is appropriate given the limited resources available and the need for specialized expertise within the system. The commentary to ABA Standard 2.6 recognizes this and calls on all providers to establish a clear strategic focus that will enable them to make “intentional choices about what legal work it will undertake, how it will deploy its resources and how it will deliver service.” ABA Standards at 66. This includes establishing long-term goals that deliver desired reform, not just the number of a particular type of case. The Standards give an example of a domestic violence program that rather than simply obtaining protective orders for clients, establishes the goal of helping them find and keep a safe environment in which to live. *Id.* at 67. For providers to focus on such longer-term goals, it will help to identify strategies beyond individual representation that can help reach those goals. But the reporting system – with its focus on simple case numbers, actually works against providers accomplishing the aim of this Standard.

Establishing long-term strategic goals and implementing a system for evaluating the effectiveness of providers’ work to achieve those goals is not amenable to a simple reporting form. Providers will need to establish benchmarks and shorter-term objectives and may discover that some are more realistic than others. Moreover, funders of civil legal services should coordinate their reporting requirements. Effective setting of goals and objectives and measurement of benchmarks can improve long-term outcomes within the system, but will require planning and testing to implement.

Appendix E – Supreme Court Order 14-8500, 2014

ATTEST: A TRUE COPY

Joey D. Maya

Chief Clerk of the Supreme Court
of the State of New Mexico

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

December 22, 2014

NO. 14-8500

**IN THE MATTER OF THE TRANSITION
OF THE ADMINISTRATION OF THE
IOLTA PROGRAM FROM THE
CENTER FOR CIVIL VALUES TO THE
STATE BAR OF NEW MEXICO**

ORDER

WHEREAS, on February 2, 2012, this Court adopted a new consolidated process for annual grant funding from funds generated pursuant to Court rule for use by civil legal services organizations to provide legal services to low income New Mexicans;

WHEREAS, the consolidated grant funding process is intended to reduce administrative costs and increase efficiency to maximize the amount of Court-generated funds available for grant awards;

WHEREAS, the fees generated by Court rule for the consolidated grant funding process include pro hac vice fees paid under Rule 24-106 NMRA, pro bono contributions made under Rule 24-108 NMRA, and interest collected on IOLTA trust accounts under Rule 24-109 NMRA, which are now collectively known as the New Mexico Supreme Court Fund for Access to Justice (the Fund);

Joey D. Mayo

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WHEREAS, at the inception of the consolidated grant funding process, the State Bar of New Mexico administered the program for collecting pro hac vice fees under Rule 24-106 NMRA and pro bono contributions under Rule 24-108 NMRA, while the Center for Civic Values administered the program for collecting interest on IOLTA trust accounts under Rule 24-109 NMRA;

WHEREAS, the New Mexico Commission on Access to Justice Grant Committee (ATJ Grant Committee) is responsible for soliciting grant applications from civil legal service organizations for awards from the Fund to provide access to justice for low income New Mexicans;

WHEREAS, to facilitate the ability of the ATJ Grant Committee to forecast the Fund balance available to award grants each year, the Court recently approved the recommendation of the New Mexico Commission on Access to Justice (ATJ Commission) to revise the annual grant funding cycle so that grants are awarded on May 1 of each year;

WHEREAS, the Board of Directors for the Center for Civic Values recently informed the Court that the Center for Civic Values no longer wishes to administer the IOLTA program without grant-making authority over IOLTA funds;

WHEREAS, unifying the administration of all Court-generated funds under a single entity will further reduce administrative costs while enhancing the

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ability of the ATJ Grant Committee to accurately forecast the amount available from the Fund for the award of grants to civil legal service organizations; and

WHEREAS, in light of the foregoing, and the Court being sufficiently advised, Chief Justice Barbara J. Vigil, Justice Petra Jimenez Maes, Justice Richard C. Bosson, Justice Edward L. Chávez, and Justice Charles W. Daniels concurring;

NOW, THEREFORE, IT IS ORDERED that the administration of the IOLTA program shall transfer from the Center for Civic Values to the State Bar of New Mexico, effective January 1, 2015;

IT IS FURTHER ORDERED that the State Bar of New Mexico shall take all steps necessary to effectuate the transfer of the administration of the IOLTA program and the Center for Civil Values shall cooperate and coordinate with the State Bar of New Mexico to ensure a smooth and successful transition;

IT IS FURTHER ORDERED that, on or before February 1, 2015, the Center for Civic Values shall provide the Court with a full accounting of all IOLTA fees collected and disbursed, including all costs incurred in administering the IOLTA program, for the calendar years 2012, 2013, and 2014, and shall cooperate with any audit of the IOLTA fund that may be required by future order of the Court;

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Joey D. Moya
Chief Clerk of the Supreme Court
of the State of New Mexico

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IT IS FURTHER ORDERED that the Center for Civic Values shall transfer all IOLTA funds collected on or before December 31, 2014, to the State Bar of New Mexico no later than January 2, 2015;

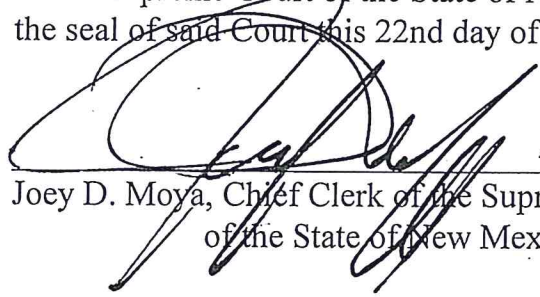
IT IS FURTHER ORDERED that any IOLTA funds that may come into the possession of the Center for Civic Values after December 31, 2014, shall be, immediately upon receipt, transferred to the State Bar of New Mexico; and

IT IS FURTHER ORDERED that Rule 17-204 NMRA and Rule 24-109 NMRA shall be amended to recognize the transfer of administration of the IOLTA Program to the State Bar of New Mexico, effective January 1, 2015.

IT IS SO ORDERED.

WITNESS, Honorable Barbara J. Vigil, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 22nd day of December, 2014.

(SEAL)



Joey D. Moya, Chief Clerk of the Supreme Court
of the State of New Mexico

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Joey D. Maya

Chief Clerk of the Supreme Court
of the State of New Mexico

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

December 22, 2014

NO. 14-8300-026

**IN THE MATTER OF THE AMENDMENT
OF RULE 17-204 NMRA OF THE RULES
GOVERNING DISCIPLINE AND RULE 24-109
NMRA OF THE RULES GOVERNING THE
NEW MEXICO BAR**

ORDER

WHEREAS, on December 22, 2014, this Court issued an order transferring administration of the IOLTA program from the Center for Civic Values to the State Bar of New Mexico;

WHEREAS, amendments to the Rule 17-204 NMRA of the Rules Governing Discipline and Rule 24-109 of the Rules Governing the New Mexico Bar are necessary to effectuate the transfer of administration of the IOLTA program; and

WHEREAS, in light of the foregoing, and the Court being sufficiently advised, Chief Justice Barbara J. Vigil, Justice Petra Jimenez Maes, Justice Richard C. Bosson, Justice Edward L. Chávez, and Justice Charles W. Daniels concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments to Rule 17-204 NMRA and Rule 24-109 NMRA are APPROVED;

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Joey D. Moya

Chief Clerk of the Supreme Court
of the State of New Mexico

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IT IS FURTHER ORDERED that the amendments to Rule 17-204 NMRA and Rule 24-109 NMRA shall be **effective January 1, 2015**; and

IT IS FURTHER ORDERED that the Clerk of the Court is authorized and directed to give notice of the above-referenced amendments by posting them on the New Mexico Compilation Commission web site and publishing them in the *New Mexico Rules Annotated*.

IT IS SO ORDERED.

WITNESS, Honorable Barbara J. Vigil, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 22nd day of December, 2014.

(S E A L)



Joey D. Moya, Chief Clerk of the Supreme Court
of the State of New Mexico

DISCIPLINARY RULES
RULE 17-204

Supreme Court Approved
December 22, 2014

17-204. Required records.

A. **Required records.** Every attorney subject to these rules shall maintain complete records of the receipt, deposit, investment and disbursement of all funds, securities and other property received from or on behalf of a client that have at any time come into the attorney's possession, and shall further maintain on a current basis all books and records that will establish the attorney's compliance with Rule 16-115 NMRA of the Rules of Professional Conduct and Rule 24-109 NMRA of the Rules Governing the New Mexico Bar. Accounting records may be maintained in either hard copy or stored on a computer. In addition to the requirements of Rule 16-115 NMRA and Rule 24-109 NMRA, an attorney shall keep a complete record and report annually on the certificate of compliance the name of each financial institution and each account number of every financial institution in which the attorney maintains funds received from or on behalf of a client. These records shall cover the entire time from receipt to the time of final disposition by the attorney of all such funds, securities and other properties. Attorneys shall preserve all such records for a period of five (5) years after final disposition of said funds, securities or other properties, or, as to fiduciary or trust records, five (5) years following the termination of the fiduciary or trust relationship. For purpose of this rule, an attorney is deemed to have the necessary "required records" by maintaining the following:

- (1) a record of all deposits into and withdrawals from each trust account, specifically identifying the date, source, and description of each item deposited as well as the date, payee, and purpose of each disbursement. Deposit slips shall separately identify each item deposited. Trust account disbursement shall be made only by authorized bank transfer

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Joey D. Moya

Chief Clerk of the Supreme Court
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**DISCIPLINARY RULES
RULE 17-204**

**Supreme Court Approved
December 22, 2014**

or by check payable to a named payee and not to cash. At least one attorney admitted to practice law in this state shall be an authorized signatory on an attorney trust account; but signature authority may be delegated to a nonlawyer, provided, however, such delegation shall not be deemed to relieve the attorney from responsibility for transactions involving the trust account;

(2) a separate ledger or account for each separate trust client, containing the information required by Subparagraph (1) of this paragraph. A continuing balance of each individual client trust ledger shall be maintained. The total of the balances of all individual client trust ledgers must equal the beginning balance of all individual client trust accounts, plus the total of all additional amounts received in trust, minus the total of all trust monies disbursed;

(3) copies of all retainer and compensation agreements with clients;

(4) copies of all statements to clients, which statements shall reflect all transactions on the trust account for the period to which the statements relate;

(5) all checkbooks, check stubs, bank statements, copies of cancelled checks, and duplicate deposit slips on each trust checking account;

(6) copies of invoices and statements received from others and paid out of trust funds;

(7) written reconciliations made at least quarterly of the checkbook balance, the bank statement balance, and the client trust ledger sheet balances;

(8) copies of those portions of each client's case file reasonably necessary for a complete understanding of the financial transactions pertaining thereto;

**DISCIPLINARY RULES
RULE 17-204**

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December 22, 2014**

(9) proof of compliance with Rule 24-109 NMRA of the Rules Governing the New Mexico Bar and copies of reports received from the financial institution in compliance with Paragraph B of Rule 24-109 NMRA; and

(10) for properties other than cash, a separate ledger for each client identifying the date received, the name of the person from whom received, the description of the property (including make, model, serial number, and other identifying marks), its location in the attorney's office or other location, the date released by the attorney and to whom released.

B. Trust account overdraft notification.

(1) **Definitions.** As used in this paragraph the following definitions apply:

(a) "financial institution" means any financial institution authorized by federal or state law to do business in New Mexico, the deposits of which are insured by an agency or instrumentality of the federal government.

(b) "properly payable" means that an instrument presented in the normal course of business is in a form requiring payment under the laws of New Mexico.

(c) "notice of dishonor" means the notice that a financial institution is required to give under the laws of New Mexico upon presentation of an instrument that the institution dishonors.

(2) **Clearly identified trust accounts required.** Attorneys who practice law in New Mexico shall deposit all funds held in trust in New Mexico in accordance with Rule 16-115 NMRA of the Rules of Professional Conduct and Rule 24-109 NMRA of the Rules Governing the New Mexico Bar in accounts clearly identified as "Attorney Trust

Joseph D. Mayra

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of the State of New Mexico

**DISCIPLINARY RULES
RULE 17-204**

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December 22, 2014**

Account” or “IOLTA Account” referred to herein as “trust accounts” and shall take all steps
necessary to inform the financial institution of the purpose and identity of such accounts.
Funds held in trust include funds held in any fiduciary capacity in connection with a
representation whether as trustee, agent, guardian, executor or otherwise. Trust accounts
shall be maintained only in financial institutions approved by the Disciplinary Board. Any
trust accounts that are IOLTA accounts shall also be maintained in financial institutions
approved by the [~~Center for Civic Values~~] the State Bar of New Mexico under Subparagraph
(3) of Paragraph B of Rule 24-109 NMRA. The Disciplinary Board and State Bar of New
Mexico shall coordinate their respective oversight functions to ensure that all trust accounts
comply with the applicable requirements in this rule and Rule 24-109 NMRA.

(3) *Overdraft notification agreement required.* A financial institution
shall be approved as a depository for trust accounts if it has filed with the Disciplinary Board
an agreement in a form provided by the Disciplinary Board to report to the Office of
Disciplinary Counsel whenever any properly payable instrument is presented against a trust
account containing insufficient funds, whether or not the instrument is honored. The
Supreme Court shall establish rules governing approval and termination of approval status
for financial institutions, and, in consultation with the Disciplinary Board, the State Bar of
New Mexico shall annually publish a list of approved financial institutions for purposes of
this rule and Rule 24-109 NMRA. No trust account shall be maintained in any financial
institution that does not agree to make such reports. Any such agreement shall apply to all
branches of the financial institution and shall not be cancelled except upon thirty (30) days
notice in writing to the Supreme Court or the Disciplinary Board.

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**DISCIPLINARY RULES
RULE 17-204**

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December 22, 2014**

(4) ***Overdraft reports.*** The overdraft notification agreement required by Subparagraph (3) of this paragraph shall provide that all reports to the Office of Disciplinary Counsel made by the financial institution shall be in the following format:

4 (a) In the case of a dishonored instrument, the report shall be
5 identical to the overdraft notice customarily forwarded to the depositor and should include
6 a copy of the dishonored instrument if such a copy is normally provided to depositors.

7 (b) In the case of instruments that are presented against insufficient
8 funds but which instruments are honored, the report shall identify the financial institution,
9 the attorney or law firm, the account number, the date of presentation for payment and the
10 date paid as well as the amount of overdraft created thereby. Such reports shall be made
11 simultaneously with and within the time provided by law for notice of dishonor, if any. If
12 an instrument presented against insufficient funds is honored then the report shall be made
13 to the Office of Disciplinary Counsel within five (5) banking days of the date of presentation
14 for payment against insufficient funds.

15 (5) ***Consent by attorneys.*** Every attorney practicing or admitted to
16 practice in New Mexico is deemed to consent, as a condition thereof, to the reporting and
17 production requirements mandated by this rule.

18 (6) ***Designation of financial institution as approved depository.*** The
19 designation of a financial institution as an approved depository pursuant to this rule shall not
20 constitute a warranty representation or guaranty by the Supreme Court, the Disciplinary
21 Board or the Office of Disciplinary Counsel as to the financial soundness, business practices,
22 or other attributes of the financial institution. Approval of a financial institution under this

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Chief Clerk of the Supreme Court
of the State of New Mexico

**DISCIPLINARY RULES
RULE 17-204**

**Supreme Court Approved
December 22, 2014**

rule means only that the financial institution has agreed to meet the reporting requirements in this paragraph.

(7) **Costs.** Nothing in this rule precludes a financial institution from

4 charging an attorney or a law firm for the reasonable cost of producing all reports and records
5 required by this rule.

6 C. **Certificate of compliance.** On forms provided by the state bar and approved

7 by the Supreme Court, every attorney subject to these rules shall annually submit to the state

8 bar the attorney's Trust Account Certification/IOLTA Compliance form demonstrating

9 compliance with this rule and Rule 24-109 NMRA [~~of the Rules Governing the New Mexico~~

10 ~~Bar~~]. Such form shall include the financial institution name, the account name and the

11 account number of any and all accounts in which client funds are held and shall be submitted

12 to the state bar with the registration statement filed pursuant to Rule 17-202 NMRA. The

13 state bar shall [~~forward~~] retain the original of each form [~~to the Center for Civic Values. The~~

14 ~~Center for Civic Values shall maintain each form~~] and shall provide to the Disciplinary

15 Board a copy of any form requested. Whenever the [~~Center for Civic Values~~] the State Bar

16 of New Mexico shall certify to the Supreme Court that any member of the state bar has failed

17 or refused to comply with the provisions of this paragraph, the clerk of the Supreme Court

18 shall issue a citation to such member requiring the member to show cause before the Court,

19 within fifteen (15) days after service of such citation, why the member should not be

20 suspended from the right to practice in the courts of this state. Service of the citation may

21 be by personal service or by first class mail postage prepaid. The member's compliance with

22 the provisions of this paragraph on or before the return day of such citation shall be deemed

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Chief Clerk of the Supreme Court
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DISCIPLINARY RULES
RULE 17-204

Supreme Court Approved
December 22, 2014

sufficient showing of cause and shall serve to discharge the citation.

D. **Applicability of rule.** This rule shall not apply to any attorney whose entire compensation derived from the practice of law during the year preceding the filing of any registration statement was received in the attorney's capacity as an employee handling legal matters of a corporation or an agency of the federal, state, or local government. Any such attorney shall, in lieu of the required certificate, certify on the same form provided by the clerk that the attorney has not had possession of any funds, securities, or other properties of a client.

[As amended, effective January 1, 1990; July 1, 1991; April 1, 2002; as amended by Supreme Court Order No. 08-8300-26, effective January 1, 2009; by Supreme Court Order No. 09-8300-019, effective January 1, 2010; as amended by Supreme Court Order No. 14-8300-026, effective January 1, 2014.]

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Chief Clerk of the Supreme Court
of the State of New Mexico

**STATE BAR RULES
RULE 24-109**

**Supreme Court Approved
December 22, 2014**

24-109. Trust accounts; special requirements for IOLTA trust accounts.

A. **IOLTA eligible funds.** Funds of a client or third person shall be deemed

IOLTA-eligible and shall be deposited in a lawyer's or law firm's IOLTA account unless the
4 funds can earn income for the benefit of the client or third person in excess of the costs
5 incurred to secure and distribute such income to the client or third person. In determining
6 whether a client's or third person's funds can earn income in excess of the costs to secure and
7 distribute such income, the lawyer or law firm shall consider the following factors:

8 (1) the amount of interest or dividends that the funds are expected to earn
9 during the period they are expected to be deposited;

10 (2) the cost of establishing and administering non-IOLTA accounts for
11 the benefit of clients or third persons, including the costs of the lawyer's services, and the
12 costs of preparing any tax reports required for interest or dividends on earned funds;

13 (3) the capability of financial institutions, lawyers, or law firms to
14 calculate and pay interest or dividends to individual clients or third persons; and

15 (4) any other circumstances that affect the ability of the client's or
16 third-person's funds to earn interest or dividends in excess of the costs to secure such interest
17 or dividends.

18 The lawyer or law firm shall review its IOLTA account at reasonable intervals to determine
19 whether any changed circumstances require further action with respect to the funds of any
20 client or third person.

B. **Special requirements for trust accounts containing IOLTA-eligible funds.**

22 Except as provided in Subparagraph (8) of this paragraph, a lawyer or law firm shall establish

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**STATE BAR RULES
RULE 24-109**

**Supreme Court Approved
December 22, 2014**

and maintain in compliance with the following provisions one or more interest or dividend-bearing trust accounts for the deposit of all IOLTA-eligible funds of clients or third persons. Each such account shall be referred to as an IOLTA account.

4 (1) No interest or dividends from an IOLTA account shall be made
5 available to a lawyer or law firm.

6 (2) An IOLTA account shall be established with any financial institution
7 authorized by federal or state law to do business in New Mexico, the deposits of which are
8 insured by an agency or instrumentality of the federal government. Funds in each IOLTA
9 account shall be subject to withdrawal upon request and without delay except as permitted
10 by law.

11 (3) Lawyers may maintain IOLTA accounts only in eligible financial
12 institutions. Eligible financial institutions are those that voluntarily offer IOLTA accounts
13 and comply with the requirements of this rule, including maintaining IOLTA accounts that
14 pay the highest rate of interest or dividends generally available from the institution to its
15 non-IOLTA customers when IOLTA accounts meet or exceed the same minimum balance
16 or other account eligibility qualifications, if any. In determining the highest rate of interest
17 or dividends generally available from the institution to its non-IOLTA customers, an eligible
18 financial institution may consider factors, in addition to the IOLTA account balance,
19 customarily considered by the institution when setting rates of interest or dividends for its
20 customers, provided that such factors do not discriminate between IOLTA accounts and
21 accounts of non-IOLTA customers, and that these factors do not include that the account is
22 an IOLTA account. The determination of whether a financial institution is an eligible

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**STATE BAR RULES
RULE 24-109**

**Supreme Court Approved
December 22, 2014**

financial institution and whether it is meeting the requirements of this rule shall be made by
the [~~Center for Civic Values~~] State Bar of New Mexico . The [~~Center for Civic Values~~]
State Bar of New Mexico shall maintain a list of participating eligible financial institutions
and shall provide a copy of the list to any lawyer upon request.

(a) An eligible financial institution may satisfy these comparability
requirements by electing one of the following options:

(i) establish the IOLTA account as the comparable rate
product;

(ii) pay the comparable rate on the IOLTA checking
account in lieu of actually establishing the comparable highest interest rate or dividend
product; or

(iii) pay an amount on funds that would otherwise qualify
for the investment options noted in Subparagraph (c) of Subparagraph (3) of this paragraph
equal to fifty-five percent (55%) of the federal funds targeted rate as of the first business day
of the month or other IOLTA remitting period, which amount is deemed to be already net of
allowable reasonable service charges or fees. This “benchmark yield amount” may be
adjusted once per year by the [~~Center for Civic Values~~] State Bar of New Mexico, upon
ninety (90) days’ written notice to financial institutions participating in the IOLTA program.

(b) IOLTA accounts may be established as:

(i) a business checking account with an automated
investment feature, such as an overnight investment in repurchase agreements or money
market funds invested solely in or fully collateralized by United States government securities,

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of the State of New Mexico

**STATE BAR RULES
RULE 24-109**

**Supreme Court Approved
December 22, 2014**

to waive any service charges or fees on IOLTA accounts.

(e) Interest and dividends shall be calculated in accordance with the participating financial institution's standard practice for non-IOLTA customers.

4 (f) "Allowable reasonable service charges or fees" for IOLTA
5 accounts are defined as per check charges, per deposit charges, a fee in lieu of minimum
6 balances, sweep fees, FDIC insurance fees, and a reasonable IOLTA account administrative
7 fee.

8 (g) Allowable reasonable service charges or fees may be deducted
9 from interest or dividends on an IOLTA account only at the rates and in accordance with the
10 customary practices of the eligible institution for non-IOLTA customers. No fees or service
11 charges other than allowable reasonable service charges and fees may be assessed against or
12 deducted from the interest or dividends on an IOLTA account. Any fees and service charges
13 other than allowable reasonable service charges and fees shall be the sole responsibility of,
14 and may be charged to, the lawyer or law firm maintaining the IOLTA account.

15 (4) Lawyers or law firms depositing IOLTA-eligible funds in an IOLTA
16 account pursuant to this paragraph shall direct the financial institution[?]

17 (a) to remit at least quarterly to the [~~Center for Civic Values~~] State
18 Bar of New Mexico all interest or dividends, net of any allowable reasonable service charges
19 or fees, computed on the average monthly balance in the account or otherwise computed in
20 accordance with the institution's standard accounting practices, provided that the financial
21 institution may elect to waive any or all such charges or fees;

22 (b) to transmit to the [~~Center for Civic Values~~] State Bar of New

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Mexico with each remittance a report showing the name of the lawyer or law firm on whose behalf the remittance is sent, the amount of remittance attributable to each IOLTA account, the time period covered by the report, the IOLTA account number for each account, the rate of interest or dividends remitted, the amount and type of service charges or fees deducted, if any, the average daily account balance of the period for which the report is made, and such other information as may be reasonably required by the ~~[Center for Civic Values]~~ State Bar of New Mexico;

(c) to transmit to the depositing lawyer or law firm a statement in accordance with normal procedures for reporting to depositors of the financial institution; and

(d) not to deduct any service charges or fees in excess of the interest or dividends earned during the remitting period from the principal of an IOLTA account or from interest, dividends, or principal of any other IOLTA account.

(5) The lawyer or law firm may deposit the lawyer's or law firm's own funds in an IOLTA account for the sole purpose of paying service charges or fees on the account or obtaining a waiver thereof, but only in an amount necessary for that purpose.

(6) The ~~[Center for Civic Values]~~ State Bar of New Mexico shall hold all funds transmitted to it in a separate account created solely for the purpose of operating the IOLTA program in accordance with this rule. ~~[and shall distribute such funds periodically in accordance with a plan of distribution that shall be prepared at least annually and approved by the Supreme Court of New Mexico.]~~ The State Bar of New Mexico shall submit for approval by the Supreme Court an annual report and budget for administering the IOLTA

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program. In addition to paying for the costs of administering the IOLTA program in accordance with the annual budget approved by the Supreme Court, the State Bar may disburse funds and award grants in consultation with the New Mexico Commission on

4 Access to Justice and approval of the Supreme Court for the following public purposes:

- 5 (a) to provide legal assistance to the poor;
- 6 (b) to provide legal education;
- 7 (c) to improve the administration of justice; and
- 8 (d) for such other programs for the benefit of the public as are
- 9 specifically approved by the Supreme Court of New Mexico from time to time.

10 (7) Every lawyer not exempt from this paragraph shall certify in
11 compliance with Rule 17-204 NMRA that all IOLTA-eligible funds held by the lawyer for
12 the benefit of any client or third-person are deposited in an IOLTA account.

13 (8) A lawyer is exempt from the requirements of this paragraph if[:]

14 (a) the lawyer is a judge, an employee of a local, state, federal, or
15 tribal government, corporate counsel, or a teacher of law, or is otherwise not engaged in the
16 private practice of law;

17 (b) the nature of the lawyer's practice is such that the lawyer does
18 not hold IOLTA-eligible funds of any client or third person;

19 (c) the lawyer does not have an office within the State of New
20 Mexico or has the client's or third person's permission to hold the funds out of state; or

21 (d) the lawyer has applied for and obtained an exemption from the
22 [~~Center for Civic Values~~] State Bar of New Mexico based on undue hardship for the lawyer

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based on geographic distance between the lawyer's principal office and the closest financial institution that is participating in the IOLTA program in accordance with criteria and procedures the [~~Center for Civic Values~~] State Bar of New Mexico shall establish.

4 C. **Interest or dividend-producing trust accounts for the benefit of a client**
5 **or third person.** A lawyer or law firm may establish one or more interest or
6 dividend-bearing trust accounts for the deposit of a client's or third person's funds that are
7 not IOLTA-eligible, the net income from which will be paid to the client or third person.

8 D. **Good-faith judgment.** The determination of whether the funds of a client
9 or third person are IOLTA-eligible in that they can earn income in excess of costs as
10 provided in Paragraph [F] A of this rule shall rest in the sound judgment of the lawyer or law
11 firm, and no lawyer shall be charged with an ethical impropriety based on the good-faith
12 exercise of such judgment.

13 E. **Designation as eligible financial institution.** The designation of a financial
14 institution as an eligible financial institution by the [~~Center for Civic Values~~] State Bar of
15 New Mexico pursuant to this rule shall not constitute a warranty, representation or guaranty
16 by the [~~Center for Civic Values~~] State Bar of New Mexico as to the financial soundness,
17 business practices, or other attributes of the financial institution. The designation of a
18 financial institution as eligible under this rule means only that the financial institution has
19 agreed to meet the comparability requirements in Subparagraph (3) of Paragraph B of this
20 rule for IOLTA accounts. Every attorney is responsible for determining whether the funds
21 of each individual client will be insured under the laws, rules, and regulations governing the

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financial institution that the attorney selects for the deposit of IOLTA-eligible funds. If an attorney establishes an IOLTA account with a federally insured credit union, the attorney is responsible for determining whether each client whose funds will be deposited in the IOLTA account must be a member of the credit union for that client's funds to be federally insured.

If so, the attorney shall either ensure that the client is a member of the credit union or deposit the client's IOLTA-eligible funds in another eligible financial institution where the funds will be federally insured.

[Adopted by Supreme Court Order No. 08-8300-027, effective January 1, 2009; as amended by Supreme Court Order No. 11-8300-018, effective May 17, 2011; as amended by Supreme Court Order No. 14-8300-026, effective January 1, 2015.]