

Using the ABA Principles of a State System for the Delivery of Civil Legal Aid

by Bob Echols

The new ABA “Principles of a State System for the Delivery of Civil Legal Aid” are a powerful tool for expanding access to civil justice at the state level. Adopted in August 2006 by the ABA House of Delegates on the recommendation of the ABA Presidential Task Force on Access to Civil Justice (appointed by then-ABA President Mike Greco and chaired by Maine Supreme Court Justice Howard Dana, Jr.), the Civil Principles are intended for use by state access to justice commissions and other key stakeholders in assessing state systems, planning to expand and improve them, advocating for needed resources, and ensuring ongoing oversight of its development.

The Civil Principles were modeled on the ABA “Ten Principles of a Public Defense Delivery System” which have been extremely effective in improving state defender systems. The Civil Principles incorporate lessons from previous initiatives into a short, easy-to-read document. They are drawn from sources including efforts by the Legal Services Corporation, the Project for the Future of Equal Justice (a joint project of the National Legal Aid and Defender Association and the Center for Law and Social Policy), and the ABA Access to Justice Support Project (now part of the ABA Resource Center for Access to Justice Initiatives).

State legal aid delivery systems

The Civil Principles look at state civil aid delivery systems as a whole, rather than at individual providers. Legal aid programs, law school clinics, pro bono attorneys, and support for pro se litigants through the courts are each regarded as part of the system. Responsibility for achieving the goal articulated by the principles is placed on no single institution, but is considered to be shared among all the stakeholders in a state’s justice system. These include the courts, state legislative and executive branches, the organized bar, legal services providers, law schools, funders, and other relevant institutions. While recognizing that the federal government through the Legal Services Corporation continues to play a leading role in providing access to civil justice, the Civil Principles reflect the current reality that achieving these goals will not occur without state-level leadership.

A number of states have well-integrated civil delivery systems, led by an access to justice commission or similar entity and providing a range of effectively coordinated services from different providers. Some states are just beginning to develop such a system. The Civil Principles provide guidance for states at all levels of development. No state achieves the ultimate goal articulated in the Civil Principles. Even where all the other principles are met, no state “provides services in sufficient quantity to meet the need.”

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ABA Principles

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Lessons from the defender experience

The defender community has found that the prestige of the ABA enables the defender-related principles to have a major impact in many contexts. Those principles have been effective in making a persuasive case to funders, the press and opinion leaders. By condensing the many previously existing standards into a set of short and straightforward statements, they provide a simple way of demonstrating, in those states with inadequate systems, “the system is broken; here’s how; here’s what needs to be done to fix it.” The Defender Principles have been incorporated into state statute and used in litigation. Within state defender systems, they have been useful in helping leaders identify issues that need to be addressed.

The Civil Principles offer similar potential. The fact that the ABA has gone on record as saying “this is what is expected of a state civil legal aid system” provides a new tool for use in efforts to expand and improve civil legal aid. Advocates for increased legal aid funding and other forms of support in addition to making their own case.

Threshold question

An initial step for state leaders using the Civil Principles to assess their state systems is to ask: “Do we have a civil legal aid delivery **system**, as compared to minimally coordinated efforts on the part of legal aid providers, the bar and the courts?”

Regarding the participation of stakeholder institutions, the fundamental questions include:

- Are the courts and the orga-

nized bar engaged in supporting and seeking to expand civil legal aid?

- Are the courts seeking ways to make the system more user-friendly for self-represented litigants?
- Is the organized bar engaged in supporting and seeking to expand pro bono service?
- Do legal aid programs collaborate effectively with the bar and the courts?

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ABA Principles of a State System for the Delivery of Civil Legal Aid

The Goal

A state’s system for the delivery of civil legal aid provides a full-range of high quality, coordinated and uniformly available civil law-related services to the state’s low-income and other vulnerable populations who cannot afford counsel, in sufficient quantity to meet their civil legal needs.

A state’s system for the delivery of civil legal aid achieves the goal if it:

1. Provides services to the low-income and vulnerable populations in the state.
2. Provides a full range of services in all forums.
3. Provides services of high quality in an effective and cost efficient manner.
4. Provides services in sufficient quantity to meet the need by maximizing and making the most effective use of financial, volunteer, and in-kind resources dedicated to those services from all likely sources.
5. Fully engages all entities and individuals involved in the provision of those services.
6. Makes services fully accessible and uniformly available throughout the state.
7. Treats clients and other who receive services with dignity and respect, actively engages clients and interacts effectively with them and engages them in planning and obtaining meaningful information about their legal needs to improve the system as a whole.
8. Engages and involves the judiciary and court personnel in reforming their rules, procedures and services to expand and facilitate access to the courts and to reduce, whenever possible, the cost of providing civil legal services.
9. Is supported by an organized bar and judiciary that is providing leadership and participating with legal aid providers, law schools, the executive and legislative branches of government, the private sector and other appropriate stakeholders in ongoing and coordinated efforts to support and facilitate access to justice for all.
10. Engages in statewide planning and oversight of the system for the delivery of civil legal aid to coordinate and support the delivery of services and to achieve the principles set forth above.

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Regarding the system itself, basic questions are:

- Do people in all parts of the state have the same level of access to civil legal aid?
- Does our system provide services to people who are denied service by federally-funded providers?
- Does our system provide a full range of services, from basic information about legal rights and responsibilities to systemic advocacy on behalf of low-income people?

Unfortunately, in some states the answers to these questions is likely to be “no.” Where that is the case, it is incumbent upon state leaders from the bench, bar and legal aid communities to step up to the plate and assume responsibility for building a truly coordinated system that effectively involves the key stakeholders and meets client needs.

LSC Funding Update

In February, President Bush signed a measure resolving FY2007 funding for all government programs, including the Legal Services Corporation (LSC). LSC’s appropriation under the measure totals \$348 million, a \$22 million increase from FY2006. LSC was one of the few programs to receive a funding increase.

Earlier in the month, the President’s FY2008 budget submission to Congress again sought a cut in LSC funding to \$311 million. The bipartisan LSC board also submitted its FY2008 budget request, asking for \$430 million.

Self-Assessment

For states that already have engaged key stakeholders and taken steps toward building an effectively coordinated system, the Civil Principles and the commentary to them offer a basis for assessing the current state of the system, planning to move forward, and measuring progress. To assist in such efforts, the ABA Task Force on Access to Civil Justice also prepared a self-assessment tool, which translates the principles and commentary into a set of questions. While most of these call for only a “yes” or “no” answer, at least one state has applied the

instrument using “inadequate,” “adequate” or “good” as responses. The self-assessment instrument can be used as the basis for a report or an event such as a retreat or the first stage of a state-wide planning process.

The Civil Principles and commentary, as well as the self-assessment tool, are available online at www.AJsupport.org (under “State Access to Justice Commissions: Key Resources” on the “Documents and Resources” page).

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