

# ACCESS TO JUSTICE

December 5, 2008

## Remarks by Chief Justice Janice M. Holder Supreme Court of Tennessee

As many of you already know, the Supreme Court of Tennessee has designated access to justice as a strategic priority this year and in the years to come. On behalf of the Supreme Court, I thank you for joining us today. We are here to explain why we are committed to the challenge of providing access to justice to all of Tennesseans and to begin outlining the direction our commitment will take us.

I will not repeat all of the statistics in the handout you have before you. But it is no exaggeration to say that low-income Tennesseans have little hope of legal assistance when they encounter civil legal problems. Only one in five income-eligible people will receive the legal help they need. We have 75 very dedicated legal aid attorneys in Tennessee, but they simply are not able to assist all of the many low-income Tennesseans who encounter legal problems on a daily basis.

This unmet need is growing greater by the day. In our current troubled economy, the need for civil legal services among Tennessee's indigent and working poor families can only be expected to increase as they face more legal problems caused by unemployment, predatory loans, uninsured medical bills, domestic violence, evictions, and foreclosures. The issues confronting low-income people will require new solutions and an increased need for existing services. As you know, we are also facing state budget cuts.

Buck Lewis, president of the Tennessee Bar Association, has pointed out that the 2008-2009 Tennessee state budget includes \$7.5 billion for health care. In contrast, only \$3.3 million are budgeted for legal care for low-income families. While health needs are important, unmet legal needs can impact the health, welfare, and safety of Tennesseans in very similar ways.

We know we are not the first to make these observations. The Supreme Court recognizes the efforts of legal aid providers, access to justice organizations, law schools, law firms, and bar associations across this State who have been working hard to address the very urgent legal needs of low-income Tennesseans. The existing gap would be even wider if these organizations had not begun to implement innovative and cost-effective programs. These programs include Saturday pro bono clinics and attorney-of-the-day programs to provide limited representation to otherwise self-represented litigants. There are a myriad of other creative programs to meet the needs of children, patients with terminal health conditions, and even inmates facing reentry into society. Our law firms are continuing to adopt plans to promote pro bono representation by the law firms' members and associates. The Court hopes to aid these efforts by encouraging legal professionals and law firms across the State to

participate in existing programs, to implement more of these programs, and to devise other innovative solutions.

To help us in achieving our goals, the Administrative Office of the Courts has recently hired an Access to Justice Coordinator, someone many of you already know well, Becky Rhodes. Our access to justice coordinator will serve as a liaison between the Court and access to justice organizations and other legal professionals who will join us in this effort. Becky has already begun assisting the Court in planning many of the initiatives I will be reviewing with you today and by continuing to develop and foster productive relationships with all stakeholders.

The Court is also redesigning our website to improve the retrieval of court and court-related information. Our redesigned website will be more user-friendly and will provide a single point of access to all of the information and services provided by the state judicial system. Other changes will enable users to obtain detailed information about access to justice issues and organizations.

Educating the public is essential if we are to succeed in finding solutions to this access to justice problem. Polls have shown that most Americans believe that low income people already have a guaranteed right to counsel in civil as well as criminal matters. Seventy-nine percent of citizens in a national survey responded “yes” when asked whether a low-income person would have a right to free counsel if sued in a civil court. Another study showed that 89 percent of those polled agree that legal help in civil matters should be provided for low-income people, but only one-third think that low-income people find it very difficult to obtain that legal help. The results of these polls highlight the need for a broad educational campaign to better inform the citizens of Tennessee about the urgency of the unmet legal needs of the indigent and working poor and to enlist public support to find the best and most comprehensive solutions.

The Court plans to begin its educational campaign by conducting a series of five public meetings in libraries across the state in early 2009. These meetings will take place in Jackson on January 21, in Memphis on February 20, in Knoxville on February 26, in Bristol on March 5, and we are finalizing the date for the Nashville meeting. Community leaders and stakeholders will be invited to participate. We will discuss the best strategies for meeting urgent legal needs and will focus on the role of the judiciary in meeting those needs.

We are fortunate that a portion of the funding for both our access to justice coordinator and these public meetings will be provided by grant money returned to the Administrative Office of the Courts by the Tennessee Alliance for Legal Services, the Tennessee Legal Community Foundation, and the Tennessee Commission on Legal Education and Specialization. We thank them for their commitment to this initiative.

Our judges are leaders in their communities, and we are asking them to help us educate their communities concerning the gap in civil legal needs in Tennessee. We need them to speak to organizations, and we need their assistance in generating support for pro bono

representation spearheaded by their local bar associations and access to justice committees. With the help of the Tennessee Bar Association, the Tennessee Judicial Conference, and the Tennessee Alliance for legal services, we will develop a DVD for use in this educational process.

We need ideas from our judiciary. Some judges have adopted innovative procedures to highlight pro bono activities such as providing preferential docketing of cases in which clients are receiving pro bono representation. Other judges have recognized lawyers' pro bono assistance in lieu of court appointments. We hope that our judges will work with their local organizations to create and update pro bono referral panels. The Court will also be providing the judiciary with a number of specific ideas for ways they can promote greater access to justice in their communities. We know, however, that our resourceful judiciary will find more ways to highlight and promote access to justice.

The Court is also asking the judiciary, bar associations around the state, and access to justice organizations to join the Tennessee Bar Association and the Supreme Court in promoting and publicizing the Statewide Public Service Day which will be held on April 4, 2009. This TBA initiative, called "4/4," will feature sponsored events providing pro bono assistance in communities around the state for people who otherwise might not have access to legal advice. Statewide Public Service Day will provide an opportunity to focus media attention on the gap in civil legal needs and on the cooperation of lawyers and judges in meeting this challenge.

We also need the contributions of legislators, members of the executive branch, court clerks, government lawyers, law schools, and other groups. We welcome the input of all Tennesseans to help develop, support, and implement policies, programs and projects that advance the ideal of equal justice under the law.

There is one final and very important component to the Court's Access to Justice Initiative that we wish to announce today. The Court will create a statewide Access to Justice Commission under the auspices of the Court. This commission will have the necessary funding and authority to accomplish its mission. That mission will include: studying access to justice issues, developing a strategic plan to address these issues in the future, and taking affirmative steps to implement the plan. We will announce the formation of this Access to Justice Commission and appoint its members on Statewide Public Service Day, April 4, 2009. We believe that Statewide Public Service Day is an auspicious occasion to launch a Commission dedicated solely and specifically to access to justice issues.

The Supreme Court is committed to assuming a greater leadership role in improving access to justice in Tennessee and to finding innovative, effective, and efficient ways to address the very real gap in civil legal services in this state. We invited you here today because we are seeking partners in our effort. Those of you in attendance represent a variety of organizations, and your presence demonstrates both your understanding and your commitment.

We acknowledge leaders of the business community, including leadership from the Tennessee Business Roundtable. We are also pleased to be joined by members of both state and local governments, and I want to recognize both Attorney General Bob Cooper and Nashville Mayor Karl Dean, as well as Steve Elkins from Governor Bredesen's office.

I also see that this audience includes members of the General Assembly. Thank you for being here today. We also have a number of judges in attendance. Of course, we have former justices, Frank F. Drowota, Adolpho A. Birch, and William M. Barker. We have several judicial leaders, including Judge William Acree, President of the Tennessee Judicial Conference, Chancellor Skip Frierson, President of the Trial Judges Association, and Ken Witcher, President of the Tennessee Council of Juvenile & Family Court Judges. And there are a number of other judges in the audience as well, including members of the Court of Criminal Appeals, Judges J.C. McLin and John Everett Williams, and judges from our trial courts. We have court clerks present as well.

We are encouraging more pro bono mediations across the state, and I am pleased to recognize a number of mediators in the audience. We look forward to your ideas and participation.

And we have representatives of some of those law firms that have adopted pro bono policies for their firms. They are particularly important to our efforts.

I want to acknowledge the current President of the Tennessee Alliance for Legal Services Board, Deb House, who is with us today; the TALS Executive Director, Erik Cole, as well as many other members of the Board, including the incoming TALS Board President, Susan Kay, who is an Associate Dean at Vanderbilt Law School. The directors of legal service programs from across the state are all in attendance. A special thanks is due to TALS for developing the handout provided today for this event. The handout outlines the magnitude of the need for civil legal services in Tennessee and the gap that currently exists.

And I see that representatives are here from all of the law schools in the state, including the deans of the Cecil C. Humphreys School of Law, Kevin Smith; the Nashville School of Law, Virginia Townzen; and the University of Tennessee College of Law, Doug Blaze. There are also educators and students here today from the Institute of Government at Tennessee State University and the Law, Justice & Society Institute at Lipscomb University.

I also want to give a special recognition to the members of the Task Force created by the Supreme Court to study issues concerning self-represented litigants. As other states have recognized, we can expect to see more self-represented litigants in our courts. How to accommodate the needs of these citizens is a growing concern for our judicial system. We have published for public comment rules that will encourage lawyers to provide limited scope assistance to self-represented litigants, and we will build on the work of our Task Force to address the issues involving Self-Represented Litigants. In particular, we would like to

recognize University of Tennessee Law Professor Carl Pierce who was Chair of that Task Force and who traveled from Knoxville to be here today.

You will also notice that we are joined in the front of the room by leaders from the Tennessee Association for Justice (TAJ), the Tennessee Lawyers Association for Women (TLAW), and the Tennessee Bar Association (TBA). Partnership with the private bar is critical and is already well underway. The collaboration with the TBA on access to justice issues began with the Court's early participation in the 4 All campaign and continues with the Court's consideration of rule changes proposed by the TBA relating to pro bono representation. We will continue to collaborate with the TBA and other bar associations in a number of ways, including judicial promotion of the Statewide Public Service Day developed by the TBA as part of the 4 All campaign.

All of you who are here today are essential to helping us address the issues we face in providing access to justice to all Tennesseans. We solicit your assistance, and Becky Rhodes will be delighted to receive your ideas to promote increased access to justice in Tennessee. On behalf of the Supreme Court, I thank you for your support today. With your help we will make Tennessee a model for the rest of the country.

I would like to call upon a few other people to add their unique perspectives.

First, it is my pleasure to introduce former Justice William M. (Mickey) Barker. As Chief Justice, Justice Barker spoke often about the need to "mind the gap" in legal services here in Tennessee, and TBA President Buck Lewis often credits Justice Barker's comments as the impetus for the TBA's 4ALL campaign. I have no doubt that Justice Barker will continue to be a great advocate for increased access to justice in Tennessee, and we are delighted to have him here to speak today. Please help me welcome Justice Mickey Barker.

Next, it is my pleasure to welcome Steve Elkins, Legal Counsel to Governor Phil Bredesen, as our next speaker. Mr. Elkins has been involved in politics and state government for more than a decade, and we are pleased to have him here today to speak from the perspective of the Executive Branch on access to justice issues. Please help me welcome Steve Elkins.

I would like to introduce Karl Dean, Mayor of Metropolitan Nashville and Davidson County. Mayor Dean's commitment to improving access to justice is reflected in his history in public office, because Mayor Dean first held public office when he was elected as Nashville's Public Defender in 1990, a post to which he was re-elected in 1994 and 1998. We are pleased to have Mayor Dean here to speak today; please help me welcome Mayor Karl Dean.

Finally, Erik Cole is the Executive Director of the Tennessee Alliance for Legal Services, TALS, the statewide network of low-income legal service providers you have heard so much about today. Before joining the TALS staff, Erik also served as the Executive Director of Tennessee Citizen Action, which is a statewide consumer watchdog organization

based in Nashville. Erik has also worked in Washington D.C, for the Campaign for America's Future and on voters action initiatives. Please help me welcome Erik Cole to speak to us today.

Again we thank you for coming today to show your support for the Tennessee Supreme Court as it embarks on this exciting Access to Justice Initiative. We hope you will continue thinking and talking about these issues, perhaps while enjoying some refreshments which are waiting for us out in the hallway. Thank you again.