

**NC** Equal Access to Justice  
COMMISSION

## Report highlights poor, need for more funding

By **DIANA SMITH**,

Staff Writer

"Why should I care?"

Even though attorney **Cal Adams** has never been asked that question when he's talked about helping North Carolina's poor gain access to civil legal services, he knows the sentiment exists, both within the legal community and outside of it.

It's not that lawyers or legislators are oblivious to the fact that poverty is a problem, said Adams. They just don't know what they can do about it.

But if the N.C. Equal Access to Justice Commission get its way, that won't be the case for long.

Established in 2005 by the state Supreme Court, the 25-member commission was tasked with examining the barriers that prevent the state's low-income citizens from getting the legal help they need.

Three years later, its first report highlights the plight of low-income citizens cut off from the courts and recommends ways to help them. The report is available on the N.C. Bar Association's Web site.

The bottom line: More than 80 percent of the state's low-income citizens can't get help in a civil legal matter, the report said.

That's because they can't afford an attorney or can't secure representation from pro bono volunteers and publicly funded lawyers, the report said.

Meanwhile, Legal Aid of North Carolina, the state's largest civil legal services provider, says it doesn't have enough money to handle the load. It turns away eight clients for every one it accepts.

Public and private funds available this year for civil legal services total \$23.7 million, only enough to pay for one legal aid attorney for every 15,500 low-income clients, the report said. And there are millions of potential clients: In 2006, almost 3.1 million North Carolina citizens were so poor that they qualified for help from legal aid agencies.



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"The peaceful resolution of civil disputes is essential to the preservation of ordered liberty in a democratic society," **Chief Justice Sarah Parker** wrote in a preface to the report. "However, our citizens lose confidence in the process when meaningful access to the forum for resolution of disputes is denied to a significant segment of our population."

For commission members, the harsh realities underscore the need to raise funding by raising awareness.

"Certainly the lack of funding makes it difficult for us to serve more people," said Adams. "To call it a failure [on the state's part] wouldn't necessarily be right. Surely they know that there's a large portion of poor people, but maybe not that these poor people have legal problems that need to be addressed.

"I truly don't know if anyone's drawn that picture for them before."

**George Hausen**, LANC's executive director, agreed.

"The cynical side of me says, 'Yeah, that's true, the state hasn't done their part.' But we need to do a better job making the case," he said.

That's the commission's strategy, said **Michelle Cofield**, who stepped down from her role as executive director this month.

Because legal services agencies such as LANC are federally prohibited from lobbying, lawyers in private practice and business leaders must take up the cause, Adams and Cofield said.

"Getting more money is a challenge, but what's immediate is the need for education," Adams said. "We need to get businesses to recognize that providing money for civil legal services actually aids them, because now their employees won't be late to work because someone sold them a lemon of a car that they can't afford to get repaired."

There's also a need to tackle prejudices about the poor. The word "poor" doesn't resonate very loudly with some lawyers, Adams said.

"They just that they know there's a poor person, and my sense is that they think, 'Well, they just have a lot less money.' Well, OK É we have all grades of people with different amounts of money. But they don't make the extra connection that some are being denied their basic necessities.

## ACCOMPLISHMENTS

Although commission members acknowledge that there is far more work to be done, the panel's report points to accomplishments resulting from its previous recommendations. Among them:

- \* **Mandatory IOLTA:** By order of the state Supreme Court, all eligible attorneys must now participate in IOLTA. Previously, 75 percent did so.
- \* **Increased funding for the Access to Civil Justice Act:** In 2007, the General Assembly increased the amount of court costs allocated to ACJA from \$1.05 to \$2.05 per case. The Administrative Office of the Courts sends those fees to LANC.
- \* **Revitalized Pro Bono Emeritus:** A bill passed by the legislature last year authorizes lawyers on inactive status to handle pro bono cases under the supervision of non-profit corporations.
- \* **New agency to oversee issues for the disabled:** Protection and Advocacy is a 'federally mandated and funded program' to protect rights for people with disabilities. Previously, the state government administered the program. Based on a formal resolution submitted by the commission, Gov. Easley redesignated the private non-profit Disability Rights North Carolina to serve as the P&A agency.

"People just don't think about it," Adams said. "I don't worry about how I'll get to work tomorrow. I have a car. My wife has a car. My oldest daughter has a car, and even if my car breaks down, I just have to pick up the phone and call somebody. I have to pay for it, but I can generally afford to have my car fixed.

"A poor person can't do that. If their car breaks down, that's a couple of hundred dollars to get the car fixed. That's part of the month's rent. If they pay that, then they can't afford food." Hausen said he sees such situations daily at LANC.

But LANC isn't getting increased funding in the 2008-2009 state budget, which Gov. Mike Easley approved earlier this month. Instead, it's getting what it got last year: \$4.5 million, which the report said isn't enough to accommodate the needs of the poor.

More than half of LANC's \$19 million budget will come from the federal Legal Services Corporation. But Congress has not yet completed the appropriations bills that determine how much LANC will receive in federal monies this year, according to Steve Barr, a spokesman for LSC.

That creates a "precarious" situation for LANC and other legal services providers, which must rely on provisional budgets until federal appropriations come through, **Hausen** said.

In the meantime, LANC tries to fill financial gaps by relying on dedicated

funding sources such as the Access to Civil Justice Act, which authorizes the state Administrative Office of the Courts to give LANC \$2.05 for each court fee paid.

The agency also runs a private fundraising campaign from November through May to solicit contributions from local bar associations, attorneys and the outside community. It receives grants from sources such as IOLTA, the Z. Smith Reynolds Foundation and the United Way.

Meanwhile, the budget boosts funds for the Office of Indigent Defense Services to \$1.1 million. The office handles criminal matters.

**Hausen** hypothesized that funding disparities exist because the state has a "constitutional obligation to help people subject to losing their liberty."

But what the community fails to recognize is that everyday people, not just criminals behind bars, are similarly endangered, he said.

"An example: You're going to provide representation for someone in danger of losing their right to liberty for a second DUI, and yet you're going to tell me the same due process rights don't adhere in a situation where a mom is going to lose custody of her children because she's not represented in a custody battle in a divorce action? That's not as important a value under the constitution as somebody who's driving the influence?"

"You're losing your job; you're losing your home. Aren't those fundamental and shouldn't those be protected?"

#### **RECOMMENDATIONS**

The report includes several recommendations for alleviating the problems faced by the poor, including:

\* **Establishing the right to counsel in civil matters impacting "basic human needs"**: The goal is to secure counsel for low-income citizens in civil matters much as a defendant in a criminal case is entitled to counsel.

\* **Increasing funding of civil legal services at state and federal levels**: The commission urges increased funding under ACJA, examining what other sources of dedicated funding might be tapped, expanding rights for court-

appointed attorneys in specified civil cases, amending the state constitution to provide right to counsel in civil matters and exploring tax deductions for individual legal expenses.

\* **Urging the N.C. Bar to make 50 hours of pro bono service mandatory**:

By so doing, the Bar would be adopting ABA Model Rule 6.1. The commission also recommends that district and superior court judges call on lawyers to assist in pro bono cases and train lawyers in ways to increase such service.

\* **Helping pro se litigants understand the court system**: By developing self-help resources and establishing self-serve centers that offer forms and procedural instructions, the state would improve outcomes for low-income people and

reduce the time judges spend on civil matters.

"The point is to look at the big picture," Cofield said. "Let's look at all the puzzle pieces that need to come together to make this work. What's the central piece that the commission can provide? The lawyers provide? The judiciary? The AOC, et cetera?"

"As we have a more focused approach and not a piecemeal or Band-Aid approach, we might be able to make a dent. A finger in the dike is only going to last so long."

– *Questions or comments may be directed to*

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