

Summit brainstorms answers to legal crisis of poor

By Guy Loranger Staff writer

Former UNC law school dean Gene Nichol called it "our greatest challenge as a profession, perhaps our greatest challenge as a nation."

Basically, something that couldn't be solved over a long lunch.

Making progress, instead, served as the goal of the Oct. 12 Civil Access to Justice Summit in Cary.

The event was presented by the N.C. Equal Access to Justice Commission — chaired by Chief Justice Sarah Parker — and supported by the N.C. Bar Association.

It brought together leaders from the state's legal, legislative, business and academic communities and featured more than six hours of speeches, presentations and discussion.

The focus: To define the challenge of providing civil legal services to the state's low-income population and to formulate ways to address a growing crisis.

Nichol, current president of the College of William & Mary, set out the context of the problem in his keynote address.

"For decades, we've announced as a fundamental principal of our constitutional law, 'There can be no equal justice when the kind of trial a person gets depends on the amount of money he has,'" he said.

"But the framework in which we operate has little in common with what we say."

DEFINING THE PROBLEM

There is no recognized right to legal representation in civil cases in this country, and there is a lack of spending nationwide on subsidized legal services, "making effective representation of the poor a statistical impossibility," Nichol said.

U.S. Census data show that more than 2.9 million residents in the state earn incomes of 125 percent or less of

the federally established poverty guidelines, according to Janet Ward Black, the president of the NCBA.

Those numbers have sharply increased since 2000, she said, because of an influx of immigrants and job losses in the state's staple industries, such as tobacco and textiles.

Meanwhile, the state's free legal services providers, such as Legal Aid of North Carolina or Pisgah Legal Services, struggle in terms of human resources and funding.

Legal Aid has only 120 attorneys, while the state's other legal services providers have a combined 20 attorneys. This means there is only one legal services attorney for every 27,000 state residents who are eligible to receive their help; eight of every 10 prospective clients are turned away.

Pro bono attorneys provide relief, but the real need is to provide more funding for these organizations so they can hire more attorneys and retain them on their staffs, Raleigh attorney Cal Adams said.

The combined budget of the state's legal services providers is \$23.5 million, he said. Only \$150,000 of that comes from individual contributors, including lawyers.

The lack of funding contributes to low salaries for legal services attorneys, who make an average of \$39,000 per year despite facing "massive" law school debts. It makes an important position into an unattractive career.

"We need to do a much better job," Adams said.

Women and children are the ones who are most in need of legal assistance, several speakers pointed out. According to Nichol, they are often left unrepresented on the most "crushing" problems of life: Divorce, custody, domestic violence, housing and benefits.

"What passes for civil justice among the have-nots is breathtaking," he said.

FORMULATING SOLUTIONS

At the end of the day, the summit featured panel discussions, breakout groups and a discussion of ways to enhance access to legal representation for the state's low-income population.

Among solutions offered by the groups were:

•**Public education:** The provision of legal services to the poor is receiving more attention these days in the legal community but not among the general population.

The group suggested disseminating information through faith-based communities and ministerial organizations or through the mass media by shining a light on "real people's stories."

The issue "is honestly, not high on the legislative agenda," according to Rep. Angela R. Bryant (D-Halifax, Nash). However, Sen. Eleanor Kinnaird (D-Orange, Person) suggested that staging a summit in the General Assembly could change that.

•**Constitutional right to representation:** This group discussed the "Civil Gideon" movement, which refers to *Gideon v. Wainwright*, the 1963 case that established the right to counsel for criminal defendants.

Due process concerns exist in civil cases as well, according to the group.

The legislature might be more apt to establish the right to counsel in civil cases if it were attached to a hot-button political issue, such as foreclosures, the group said. Funding could be provided through fee-shifting statutes.

•**Pro bono representation:** The group said the state's Rules of Professional Conduct should adopt ABA Model Rule 6.1, which calls for

lawyers to render at least 50 hours of pro bono service per year. Another suggestion was for the State Bar to make pro bono work and reporting of service hours mandatory.

The group pointed out that some law firms organize free legal clinics and even allow their attorneys to satisfy CLE requirements and billable hours through pro bono work.

•Pro se litigation: The group proposed extensive study and research into the number, type and effectiveness of pro se cases found in the state's individual districts. This research could reveal pro se needs that vary across the state and allow a targeting of resources, the group said.

These resources could go towards educating judges and court personnel about pro se litigants and possibly lead to the creation of alternative forums for pro se litigants.

•Self-serve centers: This group was headed by Charlotte trial court administrator Todd Nuccio, who discussed the 26th Judicial District's program of providing forms, instructions, videos and informational clinics to pro se litigants.

He said these centers continue to grow in popularity as part of a "do-it-yourself" cultural shift, and there will be an increasing need to improve the quality and quantity of information the centers provide to pro se parties.

The group warned against taking a uniform, standardized approach because issues vary from case to case.

•Language problems: Communication with low-income clients is a problem among immigrants, especially the state's growing Latino and Asian populations.

Interpreters should be provided not only at trial but during pre-trial mediation, the group said. Schools could help by making the learning of a foreign language a requirement. The group said that patience, understanding and sensitivity are keys with this issue.

•Business community: The business community can play a big role by providing financial assistance, including the creation of endowment funds and the funding of positions within legal services organizations.

The group said that businesses could leverage their influence by including pro bono requirements in bidding documents with vendor firms.

•Law school debt: There is a need for the federal government and local law schools to engage in debt forgiveness or repayment assistance programs, the group said.

According to Michelle Cofield, the executive director of the Equal Access to Justice Commission, a complete record of the summit (along

with reports from each breakout group) will be provided to the public at a later date.

Among the highlights from the summit was a speech from Thomas W. Lambeth, the former executive director of the Z. Smith Reynolds Foundation.

In his speech, Lambeth attempted to answer the question, "Why is access to justice important?"

The answer won't be found overnight (or over lunch), but Lambeth suggested it is one worth pursuing.

"There is no more powerful component of that idea of liberty than the idea that within our free land justice is there for all and that it is accessible and applicable to all equally and in the same measure of impact and outcome," Lambeth said.

"When we fail to realize that ideal, when we deny justice to any, when we deny the protection of the law because of wealth or power or position or class or religion or race, we diminish it for all."

— Questions or comments may be directed to guy.loranger@nc.lawyersweekly.com

#

NOTE: Also see articles in the October 1, 2007 edition of North Carolina Lawyers Weekly: "***Finding a way***," (on pages 1 and 28), and "***Summit's potential impact starts with combining talent, resources***," (on page 28).

SUMMIT AGENDA

The Summit on Civil Access to Justice in North Carolina is set for Friday, Oct. 12. It will be held at One Eleven Place in Cary, which is one mile away from the N.C. Bar Center. The day's agenda will feature:

9-9:30 a.m.	Registration and continental breakfast
9:30-9:45 a.m.	Welcome and introductory remarks
9:45-10:15 a.m.	"Why is Access to Justice Important?" Thomas W. Lambeth, Senior Associate, Z. Smith Reynolds Foundation
10:15-10:30 a.m.	"Overview of Civil Legal Needs: The Problem of Access to the Civil Justice System"
10:30-10:50 a.m.	Break
10:50-11:25 a.m.	"A Real Look at Client Stories"
11:25-11:55 a.m.	"Plenary Session: Concerns for Special Client Populations" Changing ethnicity of N.C. and its impact on the court system Child poverty and legal solutions Predatory lending and its impact in our state
11:55-12:05 p.m.	Small group discussion
12:05-12:25 p.m.	Open forum
12:30-1:30 p.m.	Lunch and keynote address by Gene R. Nichol, president, The College of William & Mary (former dean of UNC law school)
1:30-2:30 p.m.	"Panel: Solutions to the Gaps in Access to Justice" Legislative activity Self-serve centers <i>Civil Gideon</i> Role of the business community Pro bono Pro se litigants and the court system
2:30-3:00 p.m.	Solutions and next steps (breakout groups)
3-3:30 p.m.	Reports back and next steps