

State Access to Justice Tools

Best Practices: Twelve Lessons from Successful State Access to Justice Efforts

While no two states are alike, and every state's Access to Justice effort must be addressed to local circumstances, some basic lessons can be discerned in the Access to Justice efforts that have been most successful around the country over the past decade.

- 1. Successful Access to Justice efforts are founded upon a strong partnership among the bar, the judiciary, and legal aid providers. Law schools can also be key partners, while representatives from outside the legal community can bring new perspectives and help broaden support.**

Each of the key institutional partners – the bar, the courts, and legal aid providers – brings a particular set of strengths to the table. The bar brings its volunteer base and professional structure, including the potential for staffing Access to Justice efforts. Providers bring their direct experience with the civil legal needs of low-income people, their expertise in developing and implementing effective delivery models, and their links to low-income communities. The judiciary brings its unique credibility and rule-making authority, as well as direct experience in responding to the growing number of self-represented litigants. The full range of legal aid providers should be represented, including LSC-funded and non-LSC-funded programs and pro bono programs.

Law schools are key Access to Justice partners in a number of states. Professors and students can serve as valuable resources. Many law schools are in fact civil legal assistance providers, through their clinical programs. Building support for equal justice in the next generation of attorneys should be a part of the Access to Justice effort.

A few states with well-established structures have been very successful in bringing in more diverse partners, including legislators, government executives, and representatives of the business, labor, education, and religious communities. By successfully making the case that equal justice should not be the concern or responsibility of the legal profession alone, they have obtained access to new resources, new ideas and perspectives, and broader support for their goals. Several newer Access to Justice efforts are also involving a broad range of partners. Other states should consider broadening their membership as a long-term goal as well.

- 2. Formal structures that are accountable to more than one partner can be more secure than informal structures or structures accountable to only one partner.**

Informal structures or structures that are supported solely or primarily by one partner alone may lack the ability to survive in times of adversity. A state Access to Justice commission that is staffed by the bar but created by Supreme Court rule and made up of representatives appointed by different institutional constituencies is less likely to be vulnerable to funding or staffing cuts as the results of a change in bar leadership than is a bar Access to Justice

committee. While it may be possible to achieve a similar result by including a broad and diverse membership on a bar-based committee, entities that are accountable to a single institution are inherently more vulnerable. A bar-based effort is more likely to be secure if it receives contributions from other partners for staffing and expenses. Similarly, a provider-dominated group is less likely to win credibility and long-term support with the other partners.

3. Judicial leadership – especially at the state Supreme Court level – greatly increases the effectiveness of Access to Justice initiatives.

In a number of states, the chief justice or another state Supreme Court justice is an active leader in state Access to Justice initiatives. In several states, a justice is the co-chair or vice-chair of the state Access to Justice entity. The impact of Supreme Court leadership cannot be overstated. In addition to raising the visibility and credibility of the Access to Justice mission as a whole, Supreme Court leadership can greatly enhance the effectiveness of efforts to increase state funding for civil legal assistance, to increase pro bono activity, and to make the courts more accessible to low-income people. Federal District Court and Court of Appeals judges, who play a leading role in several states, can be similarly effective. More broadly, the involvement of the judiciary at all levels will enhance the effectiveness of Access to Justice efforts.

4. Individual leadership is critically important for a successful Access to Justice effort.

Building an effective structure is not enough. Strong leadership on the part of individuals will always be necessary for an Access to Justice effort to succeed.

One person can make a difference. In many states, the leadership of a single individual has been the catalyst for the successful launch, progress, or revitalization of an Access to Justice effort.

Leaders have emerged from a variety of different institutional roles – judges, bar officers, program directors, bar or bar foundation staff, and others. But many of the most effective leaders have been volunteers with no formal responsibility in this area, who simply developed an Access to Justice vision and brought others along. An individual's institutional role is far less important than the willingness to make a commitment to do what is necessary to further Access to Justice goals.

5. New and emerging Access to Justice leaders should be cultivated.

Building leadership within the Access to Justice structure itself is critically important. An Access to Justice effort that initially includes all the strongest supporters of the mission may find that three or four years later, when the original leaders are ready to move on, there is no one ready to take their place. This may occur when the sense of crisis or initial excitement associated with launching the effort is waning. The result can be a moribund Access to Justice effort.

Creating clear terms of office, with rotating leadership, can help to avoid this problem, while promoting activity and accomplishment – leaders will want to ensure that there are concrete achievements during their terms of office. On the other hand, terms need to be long enough to build expertise and relationships. Three-year terms for officers have generally worked well. Longer terms are appropriate for committee members. A good mix of long-term supporters and new blood can be ideal.

As part of an Access to Justice initiative, it can be valuable to create structures and contexts in which new leaders can emerge – for example, committees and work groups, open meetings, convocations, public hearings, and the like. People who have not previously been involved in a prominent role may respond to the Access to Justice vision and come forward as leaders.

6. Institutional commitment is necessary on the part of each of the key partners. Each partner must work to build support within its own institutional base.

As important as individual leadership is, development of strong institutional commitments is equally important. When bar presidents or executive directors, Supreme Court justices, or legal aid program directors are providing strong leadership, depth of institutional support may not seem to be of particular importance. But when those individuals move on, the failure to have invested energy in building strong and enduring support can put the effort at risk. Especially at state and local bar associations, the foundation of most successful efforts, building a culture and history of commitment to the Access to Justice mission is an important goal.

To ensure a successful, ongoing effort, each Access to Justice partner needs to take steps to build or maintain support for the effort within its institutional base. Bar leaders need to build support within the membership of their organizations; directors of legal aid programs, within their boards and staffs; jurists, among the judiciary and court personnel.

Individual leaders need to make clear what they are doing and why it is important. They should take as much care in crafting the message that they are sending to their own institutional base as the one they are sending to the state legislature, key decision-makers, and the public.

This challenge is especially important when an institutional partner is devoting institutional resources to Access to Justice – for example, when a bar entity takes on the burden of paying for Access to Justice staff. Making too big a commitment all at once can be risky. Leaders should be clear exactly what the resources are being used for and what they can reasonably be expected to achieve.

7. Assessing and publicizing accomplishments is a key task.

Assessing results and charting accomplishments is important to building support within the Access to Justice structure and the institutions that support it. Especially in a large state, it will be valuable to develop an annual plan and issue an annual assessment report.

Publicizing Access to Justice activities and accomplishments can too easily be overlooked. It's easy to assume that everyone knows everything that has been accomplished – but too often that is not the case, even within the membership of the Access to Justice group itself.

8. Access to Justice leaders should chart a compelling vision but avoid creating unreasonable expectations.

Setting a boldly ambitious goal can be an effective way to motivate participants in a campaign. Failure to articulate a compelling vision at the outset can result in failure of buy-in, energy and commitment on the part of potential partners. At the same time, creating unreasonable

expectations can be dangerous, leading to discouragement and a sense of failure when they are not fulfilled. In the messages they send to their constituents, Access to Justice leaders need to find a balance between these two competing concerns. This can be accomplished by setting reasonable interim goals while charting a bold long-term vision.

9. An effective staff capacity is essential for a successful Access to Justice effort.

While leadership roles can be filled by volunteers, staffing is necessary for adequate support, continuity, communications, and continued momentum.

Ideally, the staff person(s) should have Access to Justice as a sole, or at least primary, job responsibility and should report directly to the Access to Justice leadership. In practice, this will not always be possible, especially in a smaller state with few resources. Under these circumstances, it may be necessary for someone in an existing staff position to assume the Access to Justice responsibility. However, simply adding this responsibility to a staff person's existing duties is unlikely to be successful. Access to Justice groups should do whatever they can to find the resources to ensure that their efforts are staffed effectively.

Finding the right staff person can be difficult – the job requires significant interpersonal, communications, and political skills, the capacity to work effectively with a diverse group of volunteers, knowledge of the legal system and an understanding of the legal needs of low-income people. The skills, abilities, and energy level of the staff person are essential to the success of the Access to Justice effort. Above all, it is essential that the staff person have the full trust of all the institutional partners. A staff person who is viewed as primarily loyal to one institution – for example, the bar or the provider community – rather than the partnership as a whole, may not be effective.

10. Access to Justice structures should carefully consider how best to obtain meaningful input from client communities.

Every Access to Justice structure should find a way to obtain meaningful input from client communities. There is no single model or easy method for accomplishing this goal. While some client representatives and groups have called for individual client representation on Access to Justice entities, many experienced Access to Justice leaders believe individual representation is not an effective way to obtain client input, especially in light of the increasing diversity of client communities. In their view, legal aid providers can effectively bring to the table the insights of their client board members and the findings of their periodic needs assessment processes. In addition, leaders of social service agencies or organizations working in client communities, particularly when they come from those communities themselves, can offer particularly valuable perspectives and support. Each state Access to Justice entity should carefully consider how it will ensure that client points of view are heard and considered.

11. Access to Justice structures should be open and inclusive and place a priority on developing trust among the partners.

Just as each institutional partner has its strengths, each has its own particular institutional concerns, perspectives, and culture. Dedication to the shared goal of Equal Justice may not be

enough to prevent misunderstandings from arising among the partners. There is always a danger that a “them and us” attitude may develop, which can lead to serious divisions in a state’s justice community and do lasting damage to the Access to Justice cause. Processes that are perceived as closed or exclusive can exacerbate the danger.

All the partners in a state Access to Justice effort should be aware of this potential problem and work to overcome it. To move forward effectively, all the partners need to work hard to build relationships of trust with one another. No one partner should dominate the structure or the other partners.

Ideally, all the key institutional players should be at the table when plans and decisions are made. This will ensure that all the relevant information is available and that the judgments that are made are sound. It will promote buy-in from all the parties and minimize the potential for misunderstandings or feelings of exclusion.

Particularly in larger states, it may not be possible to function effectively without creating a formal structure based on representation – the table will simply not be big enough to include all the players. Leaders should work hard to ensure that the structure is truly representative and to solicit buy-in from all the parties. Meetings should be open to all, at least as observers. While operating in this manner may create logistical difficulties, avoiding the dangers associated with a process that is perceived as exclusive or closed will be worth the extra effort involved.

12. Partners should place a priority on promoting cooperation and consensus within their own community and strive to speak with one voice in public.

Disputes, lack of adequate communication, and failures of cooperation within partner communities can seriously damage Access to Justice efforts. Leaders must work within their own communities to avoid the negative consequences that can flow from such circumstances. In particular, diverse providers should place a priority on promoting cooperation and consensus. While debate and dissent may be inevitable – even helpful – within a community, turf, jealousy, and unnecessary competition will divert energy and undermine the cause. Leaders should try to keep the ‘big picture’ of Access to Justice as a whole front and center at all times. In their public statements, they should strive to speak with one voice.