

**ACCESS TO JUSTICE COMMISSION**  
**Remote video and audio participation through Zoom**  
**Friday November 6, 2020**  
**12 PM**

**In attendance:**

Grace Spulak (AOC, ATJ Director), PA Blalock (ATJ Administrative Assistant), Pamelya Herndon (KWH Law Center), Renee Valdez (Metro Court), Quiana Salazar-King (NM ILC), Bette Fleishman (Pegasus), Torri Jacobus (City of Albuquerque), Emily Luke (ALTSD), Jeff Wechsler (Commissioner), Janice Kauer (NMLA), Mark Bennett (JFA Consultant), Juan Abeyta (JFA Consultant), Audrey McKee (NMLA), John Greacen (JFA Consultant), Dianna Carmenaty (University of the Southwest), Mariel Willow (Pegasus), Kip Bobroff (ATJ Commissioner), Aja Brooks (2d Judicial District), Hon. Mercedes Murphy (7<sup>th</sup> Judicial District), Karen Meyers (City of Albuquerque), Lindsay Cutler (NM Center on Law and Poverty), Tom Scharmen (DOH), Amanda Frazier (2d Judicial District), Renee Valdez (Metro Court), Sovereign Hager (NM Center on Law and Poverty), Deian McBryde (attorney), George Chandler (ATJ Commissioner), Mary Smith (CLS Commissioner), Mark Pustay (United South Broadway), Melanie Fritzsche (NMLA), Sarah Steadman (UNM SOL), Hon. Shannon Bacon (NM Supreme Court), Stacey Leaman (NMLA), John Arango (CLS Commission), Terrelene Massey (Southwest Women's Law Center), Liz McGrath (ATJ Commission Co-Chair), Hon. Nan Nash (ATJ Commission Co-Chair), Deborah Norman, Lewis Creekmore, Celia Yapita (Catholic Charities), Jeff Wechsler (ATJ Commissioner), Therese Yannan (Native American Disability Law Center), Rachel Rodriguez (EAJ)

**Announcements:**

Judge Nan Nash and Liz McGrath will both be stepping down as co chairs at the end of the year. Liz will be available to help with the transition and will continue on the Governance IT.

**Concerns about the DR Information Sheet Form (Form 4A-101)-Mari Willow (Pegasus Legal Services for Children):**

-Mari Willow from Pegasus has seen pro se Kinship Guardianship litigants being turned away by courts for incomplete DR information sheets. This is principally undocumented people who don't have a social security number. Form 4A-101 (the DR information sheet) has a place for SSN and it isn't clear if it is actually required. Additionally people are turned away if they don't have information about opposing parties.

- This does not seem to be an issue in the 2<sup>nd</sup> JD but in other jurisdictions. Mari will find out which districts people have had problems in and will let Justice Bacon know. Justice Bacon will look at training for these districts.

-There was also discussion about whether the DR Information Sheet should be used for Kinship Guardianship cases since it doesn't seem to fit with these case types. Maybe develop a different Information Sheet for Kinship Guardianship cases. Mari will write a letter about the form in regard to KG and send to Joey Moya or the Chief Justice.

**Civil Legal Services Funding**

-John Arango gave a presentation about the Civil Legal Services Commission funding situation and history. That presentation is summarized in his notes that are attached to these minutes.

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-Lewis Creekmore discussed efforts that providers are making to advocate for CLS funding with legislature. Providers are working on strategies, particularly around explaining the filing fee issue to legislators. There is a need to create materials to present to the legislature with the benefits and consequences of CLS funding.

- Justice Bacon will present about this issue at the Supreme Court's November 18 meeting. - Some possible legislative champions include Nancy Rodriguez, Moe Maestas, Melanie Stansbury, Debbie Armstrong, Christine Trujillo, and Christine Chandler.

**New Landlord Tenant Notice Forms:**

-New versions of forms 4-901,4-901A, and 4-902 will go into effect on December 31, 2020. These are the notice forms that landlords must give tenants before filing an eviction case in court. The old forms made it appear that the tenant needed to immediately vacate and did not make it clear that the tenant had a right to go to court if they disagreed with the notice.

-Judges need to be notified of changes and also pro se filers need to be aware of changes via advocates.

**Consumer Debt Collection Rule Changes**

-Amended rule that goes into effect on December 31, 2020 requires plaintiffs in consumer debt claims filed in Metro and Magistrate Court to include basic information about the alleged debt, confirmation of the consumer's identity, the date and nature of the original debt, proof of chain of title, and a copy of the original contract. These requirements have been in place in the District Courts for several years.

-This new rule will also impact ODR since it will require plaintiffs to upload documentation into the ODR system in metro and magistrate court cases as well as district court cases.

-There was discussion about the problem of non-attorneys showing up to court to represent debt-collection firms in metro and magistrate court despite court rules requiring businesses to be represented by an attorney. This rule does not address this but Grace will talk with JEC about including this issue in any training that happens for magistrate judges around the new rules.

Grace will talk to the powers that be about adding the attorney issue to any training that happens for magistrate judges.

The full list of amended rules and forms can be found at <https://supremecourt.nmcourts.gov/2020.aspx>.

**Mark Bennett/JFA discussion:**

-Dashboard document to show JFA progress. Each Implementation Team (IT) will provide updates to Mark before full Commission meetings. This way we are able to use ATJ meeting time for discussion, engagement with JFA partners in other states, and problem-solving instead of reporting out.

-ITs should identify 1-2 priorities that will be their focus for the next several months.

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-The draft dashboard/blueprint is attached to these minutes. Please email Mark with any suggestions. (One suggestion is to include a space for successes so that we can see the things we have accomplished.)

-ITs should use the logic model Mark provided to refine goals for evaluation purposes.

**Next meeting January 8, 2021 at 12pm**

-We will schedule subsequent 2021 meetings at this meeting with input from the new ATJ leadership.

## FY2022 Funds for Civil Legal Services

### **Summary**

The FY 2022 budget recommendation for the Civil Legal Services Fund shows a \$731,000 cut. This cut will occur in the midst of a significant increase in the number of households eligible for civil legal aid and an overwhelming demand for assistance from families facing eviction and foreclosure.

### **Background**

The Civil Legal Services Fund (“Fund”) receives revenue from two sources: 1) appropriations made by the legislature from the General Fund and 2) fees on civil cases filed in NM courts. These fees are collected by the AoC and transferred to the Fund.

The Civil Legal Services Commission enters into contracts with NM civil legal services organizations using amounts held in the Fund. DFA administers the Commission’s contracts.

Each year, the legislature approves a budget for the Fund. The budget consists of the amount appropriated plus an estimate of filing fees to be transferred during the fiscal year.

Because filing fees are spent in the year they are transferred, prior DFA Secretaries have been concerned that, should fees transferred be less than those budgeted, contracts with providers would be cut towards the end of the year. This concern led to an agreement by the Commission in 2009 to hold at least \$200,000 in the Fund at the beginning of each fiscal year.

The actual amount in the Fund has varied but has rarely fallen below \$200,000. For the past few fiscal years, the amount budgeted has been significantly below the amounts transferred, so the balance in the Fund at the beginning of FY 2020 was about \$828,000.

The potential cut in FY 2022 has its roots in actions taken during the legislative session in January, 2019.

### **FY 2020 Fund Budget**

During the legislative session in January, 2019, House Appropriations recommended a “flat” (no increase or decrease) budget for FY 2020. The House accepted this recommendation when it passed HB2.

Several members of Senate Finance sought to increase this amount and succeeded in persuading Committee members, and then the Senate, to add \$371,000 to the amount approved by the House. This increase, intended to be “recurring” was accepted by the House and made part of the Fund’s budget for FY 2020, as shown in Table 1 on the next page.

Table 1: FY 2020 Approved Budget

|                              |              |
|------------------------------|--------------|
| HB2 Appropriation            | \$ 2,520,000 |
| SB536 Addition               | \$ 371,000   |
| Estimated Filing Fees        | \$ 1,800,000 |
| Total Budgeted               | \$ 4,691,000 |
| For DFA Administration       | \$ (90,000)  |
| For Contracts with Providers | \$ 4,601,000 |

In November, 2020, the Commission learned that DFA had determined that the \$371,000 added by the Senate was *non*-recurring because the phrase “and subsequent years” was not present in SB536.

**FY 2021 Budget**

The draft budget recommended by DFA to the Governor was again a “flat” budget that did not include the \$371,000 added by the Senate. To offset such a large cut, the Commission asked the Governor and the LFC to budget a \$400,000 draw from the balance in the Fund. This request was accepted by the Governor and the LFC. During the session, the House added \$200,000 to HB2, so the final budget was:

Table 2: FY 2021 Budget

| Source                              | Regular Session Budget |
|-------------------------------------|------------------------|
| HB 2 Appropriation                  | \$ 2,720,000           |
| Estimated transfers from the AoC    | \$ 1,800,000           |
| Draw from Civil Legal Services Fund | \$ 400,000             |
| Total Budgeted                      | \$ 4,920,000           |
| For DFA Administration              | \$ (90,000)            |
| For Contracts                       | \$ 4,830,000           |

**COVID-19**

Shortly after the legislature adjourned the Governor ordered a complete shutdown and then called the legislature into Special Session to adjust the FY 2021 budget. During the Special Session, the appropriation for civil legal services was cut by \$100,000. No change was made to the estimated filing fee transfers or to the draw from the Fund. The final amount available for contracts was \$4,730,000.

In May, 2020, the Civil Legal Services Commission met to set the amount to be contracted to 12 legal aid programs for FY 2021. Its decision was influenced by two facts:

- Demand for assistance would be much higher than in previous years due to unemployment and other displacements caused by the pandemic.
- Filing fee transfers for March and April were well below budgeted amounts due to reduced court activity. That meant that a draw from the Fund would be needed to complete FY 2020 contracts. It also meant that the \$1.8 million budgeted for FY 2021 filing fees would not be realized.

The Commission worked with an estimate of the draw required to balance the FY 2020 contracts of \$122,054 and a shortfall of \$160,000 in fees to be transferred in FY 2021. The impact on the Fund balance was projected to be:

Table 3: Projected COVID-19 Impact on Fund Balance

|  | Fund Balance      |
|--|-------------------|
| Begin FY 2020 (July 1, 2019)                           | \$ 828,000        |
| Draw to complete FY 2020 contracts                     | \$ (122,054)      |
| End FY 2020/Begin FY 2021                              | \$ 705,946        |
| Budgeted Draw from Fund                                | \$ (400,000)      |
| FY 2021 Draw required to reach \$1.8 million in budget | \$ (160,000)      |
| <b>Projected Balance, End FY 2021</b>                  | <b>\$ 145,946</b> |

The Commission was troubled by the prospect of the Fund dropping below \$200,000. But it was reluctant to cut the final budgeted amount in the face of an expected dramatic increase in demand for services. So, the Commission approved \$4,730,000 for FY 2021 contracts.

#### FY 2020 Final Fees

The final amount transferred was approximately \$1,630,000. That meant that roughly \$50,000 more than expected would have to be drawn from the Fund to cover FY 2020 contracts. That changed the projected Fund balance at the end of FY 2021 as shown below.

Table 4: Actual COVID-19 Impact

|  | Fund Balance      |
|--|-------------------|
| Begin FY 2020 (July 1, 2019)                   | \$ 828,000        |
| Draw required to complete FY 2020 contracts    | \$ (170,000)      |
| <b>End FY 2020/Begin FY 2021</b>               | <b>\$ 658,000</b> |
| Draw for FY 2021                               | \$ (400,000)      |
| Draw required to reach \$1.8 million in budget | \$ (160,000)      |
| <b>Balance, End FY 2021</b>                    | <b>\$ 98,000</b>  |

The larger than expected shortfall in FY 2020 fees also called into question the \$160,000 draw set aside for a shortfall in FY 2021. Assuming normal court activity will not begin until the middle of calendar year 2021, the shortfall is likely to be more than \$160,000. In fact, it could so large that even if all the Fund were drawn down, there would not be enough to fully cover amounts contracted for FY 2021.

**FY 2022 Preliminary Budget**

The Governor asked that FY 2022 budgets be cut by 5%. For civil legal services, that cut applied only to appropriations from the General Fund, not to filing fees. But, given what happened to transfers in FY 2020 and is likely to happen to fees in FY 2021, it would be folly to project filing fees at \$1.8 million for FY 2022. A more reasonable estimate would be \$1.6 million.

And there could be no draw from the Fund.

So, the preliminary civil legal services FY 2022 budget submitted by DFA to the Governor was:

Table 5: Recommended FY 2022 budget

| Source                                       | Regular Session Budget |
|--|------------------------|
| Appropriation (5% below current \$2,620,000) | \$ 2,489,000           |
| Estimated transfers from the AoC             | \$ 1,600,000           |
| Draw from Civil Legal Services Fund          | \$ 0                   |
| Total  | \$ 4,089,000           |
| For DFA Administration                       | \$ (90,000)            |
| For Contracts                                | \$ 3,999,000           |

**This is a cut of \$731,000 from FY 2021 contracts at \$4,730,000.**

**Discussions with Governor’s Office**

A more than \$700,000 cut will require lay-offs and significant cuts in services to eligible clients. Three actions by the Commission could reduce the impact of the cut:

- Immediately reduce FY 2021 contracts. A likely proposal would be to cut current contracts by \$350,000, spreading the roughly \$700,000 cut over two years. Spreading the cut over two years would reduce its impact but still require lay-offs and cuts in services.
- Ask for a cut of 2% in the appropriation rather than the 5% cut submitted to the Governor.
- Seek one-time funds from another source.

Since the increased demand for assistance was caused by COVID-19, the Commission first opted to seek one-time funds from the CARES Act.

## **Rationale for CARES Act Funds**

The Commission prepared a memo for the Governor that listed five kinds of civil legal needs generated by COVID-19:

- **Employment:** Protecting employee rights to safe working conditions, reemployment rights during recovery, and access to UI and state FMLA benefits for those with a legal entitlement to the same.
- **Shelter:** Protecting the rights of tenants and homeowners to live in their homes and access local and state rental and mortgage assistance and other homelessness prevention programs, as well as insuring that they understand, and effectively use, the CDC moratorium on evictions.
- **Family safety and security:** Civil protection of victims of domestic violence and sexual assault who are much more vulnerable because of familial and economic stresses associated with the emergency and mandatory social distancing orders.
- **Economic security for families and individuals who have lost employment and must replace income by looking to federal and state income and food assistance, and/or who must protect income and resources from predatory lenders.** And,
- **Health.** Assistance to families and individuals in billing disputes from COVID-19 testing or treatment.

In addition, current research indicates that roughly 50% of American families will have lower income in 2020, with the greatest losses at the lower income levels. That means more families eligible for civil legal services (at up to 200% of the federal poverty level). So, in addition to the issues listed above, COVID-19 has made thousands of families newly eligible for civil legal assistance.

The memo asked for CARES Act funds to cover the cost of assisting eligible families with the needs listed above. The memo noted that Washington state had made CARES Act funds available to civil legal services organizations to address these needs.

The Governor approved use of CARES Act funds for civil legal services. Because most of the CARES Act funds were already obligated, the amount immediately available is \$150,000. The Governor noted, however, that it was likely that some of the obligated funds would not be expended by the December 30, 2020 deadline, and that some of the amount unspent could be made available for civil legal services.

## **Next Steps**

Given that the legal problems generated by COVID 19 will continue to impact New Mexicans for many months beyond the availability of an effective vaccine, the intent is to preserve provider capacity to address the COVID related legal needs well into 2022. This can be done by spending whatever CARES Act funds are made available while holding back draws from the Civil Legal Services Fund. That is, every CARES Act dollar used to cover the cost of services generated by the pandemic keeps a dollar



in Fund that will be used in subsequent years to assist eligible families with COVID related legal needs.

The Commission will also request that the recommended appropriation show a cut of 2% rather than 5%. And it will meet in mid-December to consider reducing the draw from the Fund by cutting current contracts.

Still, even with an award of unspent CARES Act funds and a reduced cut in the recommended appropriation, civil legal services providers will experience a several hundred thousand dollar cut in FY 2022 unless the legislature appropriates far more than the recommended amount.

|  |   |
|--|---|
| <b>Mission</b>   | <b>Vision</b>   |
| Expand access to our civil justice system for all New Mexicans through | All New Mexicans have access to meaningful help for civil legal |

**Guiding Principles**

1. Equal justice under the law is a right, not a privilege. As such, in our democracy, everyone with a non-criminal legal problem should have help accessing the civil justice system.
2. It is important to eliminate barriers to the civil justice system that deny justice and keep people in poverty. For example, increasing access to justice requires promoting race equity – when race no longer influences one’s outcome.
3. The lived experience of the justice system user should guide improvements to the civil justice system.
4. The lived experience of the justice system user should guide improvements to the civil justice system.
5. A good civil legal services system must offer a full range of service delivery methods including legal information, direct legal help, and advocacy for systems change at both the local and national levels.
6. Increasing access to justice requires responsible planning and management of our limited resources.
7. Access to justice is the responsibility of all branches of government at all levels.

| Strategic Action Initiatives  | Outcome Indicator(s)   | Progress Update 11.2.20  |
|---|--|--|
| <b><i>Broad Self Help, Informational Services/Triage, Referral &amp; Channel Integration</i></b>                  | Usage by public of website (# of hits, requests, downloads, etc.)                        | Survey has been introduced to providers.   |
| Disseminate the survey and collect responses 4th qtr  | Satisfaction of users with help received via survey or alternative method. TBD           | Being converted to Survey Monkey for collection  |
| Collate and assess the responses 4th qtr  |  | Team members to be assigned to follow up with providers.   |
| Evaluate materials collected to determine which materials to include 1st qtr 21                                   |  | 4th qtr 20 - Collection, collation of survey   |
| When materials are ready to store on the website, NMLA will upload  |  | 1st qtr 21- Collect and review identified resources.   |
| <b><i>Governance</i></b>  |  |  |
| Revise current process for appointing commissioners to ensure greater diversity and inclusion of key stakeholders | ATJ will be composed of members from diverse backgrounds, racial groups, and ethnicities | Developing proposal for identifying, recruiting, and appointing Commissioners with an equity lens. |
| <b><i>Full Representation</i></b>   |  | Meeting with State Bar ED re: hosting porta  |

|   |   |  |
|---|---|--|
| Work with State Bar to promote Limited Service Representation (LSR) by attorneys in private practice  | Significantly increase # of attorneys in private practice who employ LSR to serve the needs of low income and | Governance structure created.  |
| Create a statewide portal for New Mexico  |   | Need to secure funding for development and maintenance of portal by 12/31/21 for RFP by 1/22                         |
| <b>Communications</b>   |   |  |
| Continue to implement Phase 3 of the Carroll Strategies Plan  | Increased awareness of ATJ among public and legislators. Ultimately, improved support.                        | Regular communication channels established through Bar Bulletin and with Supreme Court through liason, Justice Bacon |
| Regular communications with Bar members and Supreme Court   | Better informed to support unified efforts.   |  |
| <b>Resource Development</b>   |   |  |
| Development of unified resource entity with EAJ-Bar   |   | Monitoring. Bar is driving the timing.   |
| Seek funding for Carroll Strategies Phase 3   |   | Obtained \$20K to fund Phase 3   |
| <b>Community Integration</b>  |   |  |
| Increase coordination and integration among various civil legal services programs and other community-based groups with client bases needing civil legal assistance |   |  |
| Develop plan for community based organizations to inform ATJ work (ongoing)   |   |  |
| <b>Court Based Initiatives</b>  |   |  |
| Develop plain language shadow forms   | SRLs will have clear, useful resource for form completion   |  |
| Develop clear, friendly signage in the courthouses  | SRLs will be at ease to arrive where they need to be  |  |
| Work with Court Navigator group   | SRLs will have a guide to help them   |  |