



JUSTICE FOR **ALL?**

An Examination of the Civil Legal Needs of the District of Columbia's
Low-Income Community

EXECUTIVE SUMMARY

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On behalf of the District of Columbia Access to Justice Commission, I am proud to present, *Justice for All? An Examination of the Civil Legal Needs of the District of Columbia's Low-Income Community*. *Justice for All?* documents the array of civil legal needs facing low-income District residents and the capacity of the legal services network to respond to those needs.

Our report finds what many in our community know all too well – unaddressed civil legal problems can have a devastating impact on a person or family, and there are far too few legal resources available to help people in need. Perhaps nowhere is this more apparent than in the *pro se* statistics provided by the DC Superior Court, where, for instance, only three percent of tenants in Landlord/Tenant Court and two percent of litigants involved in domestic violence cases are represented by counsel. It is difficult to imagine a person of means deciding to proceed unrepresented in these situations. While we have made strides to help residents who cannot afford counsel, we still face numerous challenges in making equal access to justice a reality in the District of Columbia. This report provides a roadmap on how we can overcome these challenges.

Justice for All? is the most comprehensive legal needs report ever done in the District of Columbia. We are grateful to the legal services providers that responded to our lengthy surveys and provided valuable input along the way, to the community-based organizations that told us about the needs of their clients, and to the DC Courts and Office of Administrative Hearings, which provided a detailed analysis of the number and percentage of *pro se* litigants in various types of cases. We are also extremely grateful to the law firm of DLA Piper LLP (US). DLA Piper took the lead role in researching and drafting this report *pro bono*. Numerous partners, associates, summer associates, and support staff worked on this project. In particular, Sara Moghadam, Shani Dilloff, and Jennifer Zador from DLA Piper put in countless hours on all aspects of the report and managed the DLA Piper team throughout the process. Their work has been stellar. Simply put, this report would not have been possible without them.

I hope you will join us in responding to the challenges we have identified in this report, as it will take all of us working together to make a difference.

Sincerely,



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Executive Summary



Overview of the Issue

In criminal cases, a defendant facing the risk of incarceration is entitled to an attorney even if he or she cannot afford one. In most civil cases, however, a person is not entitled to an attorney, even though civil legal proceedings can affect things we hold most dear—custody of our children, our physical safety, our ability to work and need for shelter, just to name a few. Accordingly, most people who are not wealthy are forced to navigate their way through the civil legal system alone, too often with negative consequences. This is true for financial reasons but also because persons living in poverty may not even know that they have legal rights or that a lawyer can help them. This problem is particularly prevalent in the District of Columbia (hereinafter the District), where approximately 20 percent of residents live in poverty and approximately 33 percent are low income.¹

The Importance of Legal Representation

Access to counsel is not just a convenience that makes the litigation process more efficient. Legal representation can dramatically affect the outcome of a given case. Lawyers advise clients about substantive rights, claims or defenses they may not know they had. They help clients navigate their way through complex laws and procedures that govern the judicial system. These laws and procedures can be confusing even to those with formal education and economic means.

Lawyers also make a difference in situations far removed from the courtroom. They offer advice, resolve problems before they turn into court cases, advocate for laws and policies that better serve the interests of their clients and provide transactional services—such as drafting a will or advanced medical directive so that end-of-life wishes will be respected. Every day, lawyers in the District perform these valuable services for individuals with the resources to pay for them. Low-income residents need and deserve them as well.

The consequences of unaddressed civil legal problems can be devastating and spill over into other aspects of life. A person who has been evicted, for example, may also have difficulty holding down a job and keeping children in school. A person unable to remain in this country due to immigration problems may leave behind a spouse and children or have to uproot them. For a person with limited resources, losing disability benefits could lead to homelessness. And, if unable to secure legal protection from an abusive relationship, a woman may have to leave her job and her home, subjecting her children to financial insecurity and instability.

Legal Services for the Low-Income Community Benefit All District Residents

Unmet legal needs can impose substantial financial burdens on the District. For example, the District may have to pay for the emergency shelter of a family wrongfully evicted from their home simply because they were unaware of valid defenses and did not fight the eviction. Or, the District may have to provide public assistance to supplement the income of a worker whose employer has failed to follow wage and hour laws.

The decision to invest in legal services for the District's most disadvantaged residents will benefit the entire District. In fact, some estimate that every \$1 of public funds invested in legal services generates \$4 in benefits.

The DC Access to Justice Commission and This Report

In recognition of the large number of unmet civil legal needs of low- and moderate-income residents, the DC Court of Appeals created the DC Access to Justice Commission (Commission) in 2005. The Commission was charged with:

Assuring high quality access for [these] residents and others in the District, who suffer disparate access barriers to the civil justice system and with raising the profile in our community of the need for equal access to justice.

This report assists the Commission in these efforts by helping it to prioritize future initiatives. It also seeks to educate all District residents about the civil legal needs confronting low-income individuals and the legal services network's efforts to meet those needs.² Only by understanding the challenges that face so many of our neighbors can we come together as a community to address them.

The Methodology

Our data comes from several sources. These include:

- Written surveys distributed to the District's legal services community in 2006 (asking for fiscal year 2005 data).
- A short data collection form that legal services providers³ and law school clinics were asked to fill out for each person who sought legal assistance from October to November 2006.
- Interviews of 28 community-based organizations (that are not legal services providers) and government agencies.
- Court statistics.
- Listening sessions with various stakeholders.
- Social science reports concerning the District.

A legal services lawyer helped a District family understand and assert their rights in order to remedy a horrible housing situation. The family lives in an apartment complex in a low-income neighborhood. A tenant downstairs from them experienced major plumbing problems. The sewage backup caused sewage to stream into the apartment through the sink, toilet and bath tub. The tenant moved out, but the problem was never fixed. The other tenants, including this family, complained to the landlord about sewage water flooding the now vacant apartment, seeping onto the common stairwell and causing a horrible odor to spread throughout the complex. The family's back bathroom, which was directly above the flooded apartment, contained a smell so foul that the family had stopped using it entirely. No clean-up, maintenance or repair work was done for nearly two months.

The legal services lawyer educated the family about their rights under DC housing law. She also helped them write a letter to the landlord that demonstrated their knowledge of their rights and demanded that immediate action be taken. Within 24 hours of delivering the letter to the landlord, a maintenance crew was sent to the apartment complex to fix the deficient plumbing, clean out all the sewage and eliminate the offensive smells that had plagued the family and their neighbors for weeks.

This report gives an overview of the civil legal issues confronting low-income residents and the challenges that the legal services network confronts in attempting to meet them. It does not purport to provide an exhaustive discussion of any particular subject area or the role of any one part of the network in meeting unmet legal needs. It also does not focus on the legal needs of moderate-income residents or attempt to assess the quality of legal services delivered. Nor does it go into matters not currently addressed by any provider. The report only touches in passing on the barriers low-income residents—with or without counsel—face in navigating the courts, government agencies and the Council of the District of Columbia (hereinafter the Council). All of these issues are important and merit future study.

Our Findings

1. SUBSTANTIAL OBSTACLES TO OVERCOME

Low-income residents face tremendous obstacles in the civil legal system. The problem is not merely the inability to afford an attorney. The barriers are also educational, physical and emotional. As one representative of a community-based organization observed:

Poverty isn't just poverty of finances. It is poverty of a broad set of issues and concerns. It is a poverty of access, education, resources, and streams of knowledge that allows you to participate fully in society. This poverty includes [knowledge about] legal rights.

Among other things, many low-income residents:

- Are unaware of their legal rights,
- Lack knowledge regarding the availability of legal services,
- Have difficulty getting to a lawyer because many residents are geographically isolated from lawyers and the courts,
- Lack trust in the legal system, and
- May have become used to accepting adversity and unfairness. Believing that change can occur is the first step in advocating for it; for many residents, this first step may be the hardest.

Moreover, many of the District's poorest residents also have physical or cognitive disabilities, do not speak English fluently, are elderly, have poor literacy skills, are in jail or prison or have criminal records. For these individuals, the

barriers to civil legal justice are heightened substantially. So, too, are the challenges that providers must confront in meeting their needs. For instance, written self-help materials are of no use to those who cannot read them, and free legal assistance is of little use to those who cannot go to a provider's office or understand the language in which the services are delivered. Since segments of the District's low-income community are not only diverse but live with particular hardships, it is important for the legal services community to tailor its outreach, education and service delivery methods to meet these residents' unique needs.

Community organizations have many ideas about how to overcome some of these obstacles. For example:

- Because people with limited resources may have limited time and inconsistent schedules, information should be distributed at places that already intersect with their daily lives, such as churches or schools.
- Walk-in services are preferable to services that are only by appointment.
- Low-income residents often lack substantial formal education and may be low literate or illiterate. Accordingly, in-person communication is preferable and written materials must be easily comprehensible.
- Many low-income residents lack access to computers and, therefore, the Internet may not be the most effective means of distributing information to them.
- Low-income residents may be distrustful of lawyers and the legal system. Legal services providers should develop relationships with churches and other trusted community organizations that serve these residents.
- Different cultures and communities require different forms of communication. For example, oral communication rather than written materials may be more effective in reaching out to certain ethnic communities.

2. THE EXTENSIVE, VARIED AND COMPLEX CIVIL LEGAL NEEDS CONFRONTING THE LOW-INCOME COMMUNITY

The civil legal needs confronting members of the low-income community are varied and complex. They are often intertwined with physical or emotional well-being. In addition, low-income residents may have more civil legal needs than their wealthier counterparts due, in part, to their interaction with government agencies and their vulnerability to scams and unfair practices (such as predatory lending, foreclosure rescue scams and unfair employment practices).

Our report looks at nine different subject areas: consumer, education, employment, estate planning/wills/probate,⁴ family, public benefits, health/disability, housing and immigration. Survey and data collection participants

also reported on other issues that did not fall neatly into these categories, such as prisoners' rights issues, personal injury and police misconduct/disputes.

Within each of these subject areas, the low-income community needs legal services. The following summary illustrates the types of issues, the kinds of legal services that will help address the need and other findings of interest for each subject area. It does not purport to be a complete explanation of our findings, which are in Sections III-VIII of the full report.

In reviewing the summary, please note that it lists the number of full-time equivalent (FTE) legal services attorneys in each subject area in 2005. In fiscal years 2007 and 2008, the DC government appropriated \$3.2 million for civil legal services that resulted in the hiring of 31 additional FTE legal services lawyers. Seven of these FTE lawyers work in Landlord/Tenant Court, as is noted in the summary. The rest are not included in the summary's figures, because these lawyers are not necessarily limited to one practice area.

Summary of Subject Areas

SUBJECT AREA	REPRESENTATIVE ISSUES/CASE TYPES	EXAMPLES OF NECESSARY SERVICES
CONSUMER	<ul style="list-style-type: none"> • Predatory lending • Deceptive business practices • Bankruptcy/debt collection 	<ul style="list-style-type: none"> • Assisting with bankruptcy petitions • Reviewing contracts before execution • Advocating for new consumer protection legislation
EDUCATION	<ul style="list-style-type: none"> • Special education • Disciplinary proceedings • School transfers/access to education 	<ul style="list-style-type: none"> • Advocating for reform of the education system • Representing individuals in special education proceedings
EMPLOYMENT	<ul style="list-style-type: none"> • Wage and hour issues • Employment discrimination • Wrongful termination • Unfair employment practices 	<ul style="list-style-type: none"> • Representing discharged workers in court and administrative proceedings • Advocating for wage and benefits legislation • Educating the community regarding unfair employment practices
ESTATE PLANNING/ WILLS/PROBATE	<ul style="list-style-type: none"> • Wills • Guardianships • Conservatorships 	<ul style="list-style-type: none"> • Drafting wills and advanced medical directives • Providing advice or representation to participants in probate proceedings

Summary of Subject Areas (continued)

SUBJECT AREA	REPRESENTATIVE ISSUES/CASE TYPES	EXAMPLES OF NECESSARY SERVICES
FAMILY	<ul style="list-style-type: none"> • Domestic violence • Child custody/visitation • Divorce • Child welfare 	<ul style="list-style-type: none"> • Representing victims of domestic violence • Representing children, parents, and foster parents in child welfare proceedings • Preparing petitions for divorce • Advocating for laws to protect domestic violence survivors • Advocating for laws reforming foster care • Seeking reform of court processes to facilitate self-representation
PUBLIC BENEFITS	<ul style="list-style-type: none"> • Temporary Assistance to Needy Families (TANF) • Social Security • Food stamps 	<ul style="list-style-type: none"> • Assisting individuals to navigate agency procedures • Applying for or appealing the denial of benefits • Educating the community regarding eligibility
HEALTH/DISABILITY	<ul style="list-style-type: none"> • Health insurance • Americans with Disabilities Act/accommodation issues • Medical debt 	<ul style="list-style-type: none"> • Intervening with an insurer to resolve a coverage issue • Seeking regulatory changes to broaden health coverage • Working with community groups and service providers to inform persons in poverty about health programs
HOUSING	<ul style="list-style-type: none"> • Affordable housing • Eviction proceedings • Other landlord/tenant disputes • Housing discrimination 	<ul style="list-style-type: none"> • Representing tenants facing eviction or living in hazardous conditions • Assisting tenant associations with incorporating and organizing • Preserving affordable housing in the District • Changing procedures in Landlord/Tenant Court
IMMIGRATION	<ul style="list-style-type: none"> • Deportation/removal proceedings • Status/classification issues 	<ul style="list-style-type: none"> • Representing individuals in deportation cases • Outreach and education regarding changes in immigration laws

Additional Findings Regarding Subject Areas

Consumer

- With limited resources and sometimes bad credit ratings, people living in poverty are vulnerable to exploitation by unscrupulous lenders, merchants and scam artists.
- Subprime loan providers target customers with few financing options. As a result, they may be predatory and carry excessive and unjustifiable fees, penalties or loan terms, involve inappropriate marketing strategies and fail to disclose loan terms fully. In 2003, home buyers in Wards 5, 7 and 8 were almost ten times more likely to receive a home purchase loan from a subprime lender than those in Ward 3.
- There were approximately five full time equivalent (FTE) paid legal services attorneys who focused on consumer matters in 2005.
- Consumer exploitation or other forms of economic injustice are a major problem for District residents but a nebulous one, making it unlikely that victims will recognize the need for legal assistance. These problems usually cannot be remedied by traditional forms of one-on-one representation. Many are systemic problems that require a comprehensive strategy and the resources to carry it out.
- Community-based organizations reported that those who are low-income and the elderly have the greatest need for assistance in the consumer area.
- Financial services cases can be difficult to staff with pro bono lawyers because of conflicts issues.

Education

- In 2006-2007, the high school graduation rate for students in the District was only 58%. The city would save almost \$20 million in health care costs over the lifetimes of each class of dropouts had they earned diplomas.
- Over 50% of teenage students attend schools that meet the District's definition of "persistently dangerous" due to the number of violent crimes on campus.
- In 2005, there were approximately five FTE paid legal services attorneys devoted to education matters.
- Almost all of the providers who received requests for education-related assistance identified special education as one of its two most requested. More than one provider also identified disciplinary proceedings and school transfers/access to education.
- The school district's special education system is of particular concern to legal services providers. In 2004-2005, nearly 19% of students were identified as disabled. This figure is up from 11.4% in 1999. The system is ill-equipped to handle the large number of children who are disabled, and all children suffer as a result.
- Providers have observed that the statutory cap on the attorneys' fees payable in special education cases has greatly reduced the incentive for private attorneys to take these cases.

Employment

- The District's unemployment insurance (UI) program replaces less than 25% of average earnings, which places the District last among the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands.
- In 2005, there were approximately six FTE paid legal services attorneys who focused on employment matters.
- Data collected by the Office of Administrative Hearings (OAH) over two representative months demonstrates that only about 10% of all parties in UI appeals are represented by counsel. About the same number of employees as employers were represented. In 2005, more than 50% of appeals taken to the DC Court of Appeals from agency matters were by *pro se* litigants, (i.e., people who appear in court without a lawyer) and the overwhelming majority of those were UI matters.
- Community-based organizations emphasized a particular need for assistance with employment issues among the immigrant and ex-offender communities.
- The potential recovery for low-income employees may not be large enough for a plaintiff's lawyer to agree to bring an employment discrimination claim on a contingency fee basis.

Estate Planning/Wills/Probate

- Persons in non-traditional household arrangements have a special need for wills and other estate planning.

Additional Findings Regarding Subject Areas (continued)

- Approximately three FTE paid legal services attorneys were devoted to estate planning work in 2005, fewer than any other subject area.
- In 2005, nearly half of the formal probate matters before the DC Superior Court's Probate Division involved *pro se* plaintiffs. Almost all of the small estate matters (*i.e.*, those involving assets of \$40,000 or less) and the majority of the trust matters before the Probate Division involved *pro se* plaintiffs. Similarly, in 2005, 40% of appeals to the DC Court of Appeals from the Probate Division involved a *pro se* litigant.
- Estate planning ranked fourth (behind housing, family, employment and tied with consumer) in terms of the subject areas in which providers perceive the most under-addressed legal need.
- There are both unique opportunities and challenges when it comes to utilizing pro bono assistance in this area. Because matters can be discrete, estate planning work may provide opportunities for transactional attorneys or smaller firms to assist low-income residents. However, probate matters can be particularly difficult to place with pro bono attorneys because it is difficult to tell at the outset if the matter will require tax, real estate or other expertise. Most probate lawyers are solo practitioners or with smaller firms and lack the resources to do extended pro bono work.
- The District's aging population makes it likely that the low-income community's need for estate planning assistance will continue to increase.

Family

- The Center for the Study of Social Policy reports that only 45% of child abuse and neglect investigations are completed within the 30-day deadline.
- Since the overwhelming majority of poor and low-income children come from single parent homes, there is a great need for child support enforcement services in the District, including establishing paternity and obtaining and enforcing child support orders.
- Approximately 21 FTE paid legal services attorneys focused on family law in 2005.
- In the Family Court, 38% of plaintiffs were *pro se* in adoption cases and 77% of plaintiffs were *pro se* in divorce/custody/miscellaneous cases. On the respondents' side, nearly 38% in 2005 were *pro se* in divorce/custody/miscellaneous cases, and over 98% of respondents were unrepresented in paternity and child support cases.
- In 2005, about 98% of both petitioners and respondents in the Domestic Violence Unit were *pro se*.
- More providers ranked family law among the top four areas in which requests were received in 2005 than any other subject area.
- Of the five "generalist" organizations that provide services in a range of areas, all included family law in the top three subject areas in which they received the most requests.
- There is a need for assistance with multi-jurisdictional custody and support issues because while many

people move to or from the District, most providers focus only on disputes arising in the District.

- It is difficult to find legal services attorneys, particularly bilingual attorneys, to take time consuming divorce cases.

Public Benefits

- While 25% of the District's families live below the federal poverty level, only 15.7% received TANF benefits in 2005. The average TANF payment for a family of three in the District is \$407 per month (compared to \$490 in Maryland and \$389 in Virginia), and is lower than half the states.
- In 2005, approximately 12 FTE paid legal services attorneys were devoted to public benefits matters.
- In 2006, 871 public benefits appeals were filed with OAH. OAH estimates that over 95% of the parties proceeded unrepresented with their TANF, food stamps, Medicaid and interim disability assistance cases.
- The public benefits problems confronting low-income residents are often exacerbated by the government agencies charged with delivering the benefits. The need for advocacy work with respect to these agencies is extensive and critical.
- Public benefits rules and regulations are among the most technical and complex in the poverty law area. These regulations challenge even experienced advocates.

Health/Disability

- There is a strong correlation between poverty and disability. About 33% of District residents who are disabled live below the poverty line, compared to about 20% of the total population.
- 10,000 residents under the age of 18 had no medical insurance coverage in 2006. Numerous persons that qualify for public coverage are not currently enrolled.
- The District's AIDS rate is the worst of any major city in the country. In 2006, there were 12,428 people reported as living with HIV and AIDS in the District.
- In 2005, approximately 15 FTE paid legal services attorneys were devoted to health/disability matters.
- Legal services providers believe that there will be an increase in the legal needs related to mental health issues.

Housing

- Over 37% of District residents live in housing that is deemed unaffordable, meaning that these residents spend over 30% of their income on housing costs. Over 18% of District residents are experiencing severe housing burden, meaning they spend more than 50% of their income on housing costs.
- Housing issues confronting the low-income community are extensive and vary depending on whether the resident is a homeowner, renter, recipient of public housing assistance or homeless.

- In 2006, 2,114 families applied for emergency shelter at the District's central intake facility, including an estimated 3,332 children. However, emergency shelter apartments or alternative services served only 442 of those families. As of 2006, the estimated wait time for a family seeking emergency shelter was at least six months.
- In 2005, about 20 FTE paid legal services attorneys were devoted to housing matters. The public funding beginning in fiscal year 2007 added seven more attorneys stationed in Landlord/Tenant Court to provide same day representation to *pro se* litigents.
- More than 46,000 cases were filed in Landlord/Tenant Court in 2006. Only about 3% of defendants who have to appear in Landlord/Tenant Court are represented by counsel.
- Of the cases filed in Landlord/Tenant Court, approximately 75% are closed due to dismissals or default judgments. Of the remaining 25%, approximately two-thirds are closed by confessions of judgment or consent agreements, notwithstanding claims or defenses that may be applicable. In contrast, tenants who are represented by counsel rarely enter consent judgments.
- The District has a number of pro-tenant laws, but many residents are unaware of these laws.

Immigration

- From 1980 to 2000, the immigrant population in the District rose from 40,559 to 73,561 – an 81.4% increase. While the total District population declined by 6% in the

1990s, the immigrant population grew by 25%.

- The District's immigrants come from a variety of countries. Such a melting pot of customs, language, religion and social outlooks creates a complex and diversified set of issues and needs.
- Of the approximately 11 FTE paid legal services attorneys who were devoted to immigration matters in 2005, all worked with smaller providers.
- District providers face pressure to serve a large number of immigrants residing outside of DC because local initiatives in neighboring suburbs have targeted immigrants.
- Residents seeking assistance with immigration issues can face unique obstacles such as substantial filing and other fees charged by federal agencies (which, unlike courts, will not waive fees for indigent applicants) and language barriers.
- Public benefits or other civil legal problems (and their resolutions) can have collateral consequences on immigration status.
- The close linkage between one's immigration status and other civil legal issues makes it increasingly challenging for legal services providers to address and anticipate all the collateral issues that could arise when serving immigrants. As a result, the need for understanding the intricacies of immigration law extends far beyond just those providers that focus on getting clients permanent residence, citizenship, or asylum.

While it is extremely difficult to quantify the exact magnitude of need in each of these areas, some information is available. The DC Courts provided statistics for 2005 concerning the number of *pro se* litigants for certain cases. These statistics, which are included in the preceding summary, demonstrate that the need is substantial. To recap:

- Almost 45 percent of formal probate matters, 98 percent of the small estate matters and 60 percent of the trust matters before the Probate Division of DC Superior Court involved *pro se* plaintiffs.
- 98 percent of both petitioners and respondents in the Domestic Violence Unit of the DC Superior Court proceeded *pro se*.
- 77 percent of plaintiffs in divorce/custody/miscellaneous cases in Family Court were *pro se*.
- More than 98 percent of respondents in paternity and child support cases were *pro se*.
- About 97 percent of defendants who had to appear in Landlord/Tenant Court were *pro se*.

Some subject areas also had more activity and articulated demand for services than others. For instance, according to our data, family, housing and public benefits were the areas in which the largest numbers of requests for legal assistance were received. Our survey of providers indicated that:

- More providers turned away requests for assistance in family, housing and consumer than any other area.
- Providers perceived the most under-addressed legal needs to fall within the areas of housing, family and employment.
- Housing, family and immigration were the three subject areas for which providers most frequently anticipated an increase in the need for civil legal services.

Community-based organizations most frequently mentioned the following subject areas as those with the greatest level of need: housing and landlord/tenant, immigration, employment, public benefits, consumer and family law. As demonstrated throughout this report, however, the unmet need for legal assistance in each of the nine areas is significant. Our survey confirmed that there is no area in which all of the need is being met. Further, in almost every subject area, at least one provider anticipated that the level of need would increase.

For several reasons, this report does not rank subject areas in terms of importance or urgency. First, the number of requests for assistance in each area does not tell the entire story because, among other things:

- Residents are more likely to recognize some issues as a legal problem than others (and, therefore, are more likely to seek out assistance for that issue)—*e.g.*, an eviction proceeding may be more recognizable as a problem with which lawyers can assist than a predatory lending scheme;
- Many people do not know about the availability of civil legal services and so do not seek them;
- Residents may stop asking for assistance if they already know that few legal services are available; and
- People generally seek assistance for their individual problems, and thus requests for assistance typically do not take into account the need for systemic advocacy and broad-based legal representation.

Second, the areas that are most pressing may vary depending on the subset of the low-income population—*e.g.*, immigrants, the elderly or ex-offenders may have needs that are different from those of the population as a whole. Finally, it is impossible to rank these subject areas in terms of relative importance simply because the stakes in so many of these matters are so very high. The matters may differ, but bad outcomes in any one of them could prove equally disastrous.

3. THE CAPACITY OF LEGAL SERVICES PROVIDERS

The District has a variety of resources to draw from in serving low-income residents. The city is home to a legal services community that includes more than 30 legal services providers, government agencies and law school clinics. The providers range from one lawyer to more than 30 and from generalists offering a diversity of legal services programs to those focusing on particular subject areas. They have a wealth of expertise, use varying practice models and provide services ranging from distributing self-help materials to brief advice to full representation.

In addition, members of the District's judiciary have continually demonstrated their commitment to improving access to justice for all District residents. The District is also home to a private bar with an unsurpassed commitment to pro bono work. The private bar supports pro bono activities and the District's Interest on Lawyers Trust Accounts program (IOLTA).⁵ The program has seen a significant increase in fiscal years 2006 and 2007.

Furthermore, in fiscal year 2007, for the first time the Council voted to provide \$3.2 million in funding to support civil legal services. Mayor Adrian M. Fenty and the Council continued this level of support for civil legal services in fiscal year 2008.

All of these factors have given the District a solid base for addressing residents' unmet legal needs. That is the good news. The bad news is that the good news is not nearly good enough.

Even in light of these resources, the needs of those who cannot afford a lawyer substantially outweigh the available services. Our survey indicated that one of the top three reasons providers turned away requests in 2005 was that they had inadequate resources to handle the matter. Resource constraints also likely played a role in the other two reasons providers gave for turning away requests—the matter fell outside of the provider's mission or expertise, or the person making the request fell outside the provider's income or eligibility guidelines. Providers are limited in the services they can provide and the areas they can serve due to a lack of funds for staff and training. Similarly, providers often use income eligibility guidelines as a way of rationing scarce resources.

The legal services providers reported a combined budget in 2005 of approximately \$15 million for the provision of legal services to District residents. (This figure excludes funds dedicated to the civil cases that bear a statutory right to counsel.) The budgets of individual providers ranged from \$60,000 to \$2 million, with the plurality falling within the \$100,000 to \$500,000 range. Notably, some of the legal services providers' funding comes with certain restrictions, such as the populations that can be served (*e.g.*, only the elderly, victims of domestic violence or people with disabilities) or the subject area that must be covered (*e.g.*, housing). Such restrictions limit providers' ability to shift areas of service and case priorities to meet emerging needs.

Even with the recent addition of \$3.2 million in government funding (which was not available in 2005), the providers' collective budget does not come close to what is spent on other aspects of our justice system or what is needed to serve the District's low-income community. Legal services providers, along with the pro bono services of District lawyers, are the primary way for low-income District residents to have significant participation in the justice system. The lack of funding for the providers limits their ability to serve more clients directly and to facilitate the work of more pro bono attorneys. The result is a lack of meaningful access to our judicial system for thousands of city residents.

Our survey indicated that there were approximately 140 FTE legal services attorneys working to meet the civil legal needs of the District's low-income community in 2005 (excluding those working on the limited numbers of cases in which there is a statutory right to counsel). An additional 31 attorneys have been employed as a result of the DC government's recent funding. While the legal services network only had about 12 FTE positions located east of the Anacostia

River in 2005, the public funding has more than doubled this number. Even with these additional attorneys, staffing is far from adequate to meet the need.

Most legal services providers are relatively small. In 2005, half had three or fewer lawyers working for them. Legal services attorneys working in the family, housing and health/disability areas constituted over 50 percent of all the legal services attorneys in 2005. There were only about five FTE legal services attorneys serving the District's low-income community in areas such as consumer and education. The recent infusion of public funding added seven housing lawyers, with the rest of the 31 lawyers spread out among the other subject areas.

Given their limited resources, legal services providers have accomplished remarkable things and served a significant number of District residents. Our survey indicated that they collectively provided full representation (representation through the resolution of the matter) to nearly 3,600 people in 2005. That figure does not include the number of people represented by pro bono counsel. More than 23,000 individuals received limited advice and several thousand received a referral to another legal services provider. These services are important, but our survey demonstrates that providers want to and need to do much more.

4. CHALLENGES FACING THE LEGAL SERVICES NETWORK—A CALL TO ACTION

Our report identifies a number of challenges the legal services network must address in order to serve more low-income residents more effectively. Resources are at the root of many of these challenges, but additional funding is not the complete solution. Many of these challenges are longstanding and not easily solved. That is not an excuse to let the problems persist, but rather a call to action to all involved—legal services providers, government agencies, courts, bar members, law schools, foundations and all others who are part of our civil justice system—to come together and tackle these challenges. We identified ten courses of action which would greatly improve the provision of legal services to the District's low-income residents.

A. Increase Staff of Legal Services Providers

Each legal services provider lacks the staff necessary to assist all the people who walk in the door; as a result, providers are forced to ration assistance. For instance, our data indicated that a significant number of providers only had capacity to offer low-income residents brief advice or *pro se* assistance to many seeking services. The relatively small number of legal services lawyers cuts across subject matter areas. It

A legal services lawyer represented Ms. Parker*, a woman who fled with her children from a violent relationship. Because the father of her children was more sophisticated and had more resources, he was able to manipulate the system. Ms. Parker was charged with parental kidnapping and her children were taken away. After a bitter and difficult legal battle, the DC Superior Court found that Ms. Parker was a victim of abuse, entered a protective order for her, and began the process of reuniting her with her children. If Ms. Parker had not been able to get a legal services lawyer, it is possible that she would not have been able to get custody of her children.

* The names of the people in this report have been changed to protect client confidentiality.



is difficult to fathom, for instance, that there are only about five FTE legal services lawyers working on consumer-related issues in the District, given the widespread nature and complexity of these problems. On the other end of the scale, those areas with the most lawyers—housing and family law—still do not have nearly enough attorneys to meet the need. Low staffing also inhibits the ability of legal services providers to leverage the pro bono resources available in the private bar because there are fewer attorneys available to train, mentor and support pro bono attorneys and to package and refer matters for them to handle. It is a simple equation: more legal services lawyers will equal more low-income people served.

B. Make the Legal Services Delivery System Even More Accessible to the Low-Income Community

The legal services network has a number of different legal services providers with widely varying characteristics. While there are benefits to such diversity, the fragmented nature of the system can give rise to inefficiencies and can be confusing to residents who are seeking to find the right provider for a particular case. Consequently, the network should find ways to get clients to the right organization quickly. In addition, the combination of too few attorneys and too many requests for assistance results in a system that generally focuses on a high volume of brief assistance as opposed to extended representation. While not everybody needs (or wants) full representation, the network should respond according to the clients' needs and ensure that the structure of the system does not affect the type of assistance the client receives.

C. Expand Systemic Advocacy

The combination of immediate client needs and too few resources precludes most providers from devoting substantial time to strategic systemic advocacy, despite the desire to do so and the recognition that such efforts could have a broad, lasting impact. Systemic advocacy projects hold the promise of assisting with issues underlying the needs of low-income residents and should be increased. This work does not result in changes overnight, and measuring success is more difficult in comparison to representing an individual client. However, investing in this capacity, if done thoughtfully, should yield results that will affect a broader cross-section of the low-income community.

D. Expand Pro Bono While Ensuring Effective and Efficient Use

The pro bono support that legal services providers receive from the private bar significantly expands their capabilities to serve low-income residents. However, even with all of the pro bono work that goes on in the District, there is still an urgent need for more. The private bar has considerable untapped sources that could provide significant pro bono support. It is incumbent on the legal services providers and the private bar to maximize pro bono and ensure its effective and efficient application. To meet this challenge, pro bono attorneys need additional training and support; law firms should develop more in-house expertise in poverty law areas; the legal services network should examine the most appropriate ways to use pro bono lawyers to meet different poverty law needs; and the private bar should speak out forcefully when pro bono efforts appear limited in a particular area.

E. Increase Outreach and Community Education to the Low-Income Community

Although it is generally acknowledged that low-income residents lack

education about their legal rights and the availability of legal services, providers have generally been reluctant until now to devote too much of their limited resources to outreach and community education. Among other things, providers are concerned that extensive outreach will essentially be false advertising, since they do not even have the capacity to help all the people who seek assistance now. The addition of legal services attorneys due to the infusion of public funding should result in greater outreach. Moreover, by educating members of the low-income community about their rights and encouraging them to vindicate those rights, providers may learn of matters earlier in the process so issues can be addressed before they turn into full-fledged cases.

F. Expand Partnerships and Outreach to Community-Based Organizations

Community-based organizations we interviewed could often identify only a handful of providers to whom they had referred clients; they generally lacked knowledge about the majority of legal services providers. These community-based organizations are on the front lines serving the low-income community and need to be aware of the range of legal services available to their constituents. Collaborations between and among legal and social services providers (*e.g.*, between medical clinics and lawyers) are on the rise, which should help address the lack of knowledge problem to some degree. Further collaboration between legal and social services providers, even if no formal partnership is formed, is needed to increase the awareness of and to streamline the legal services process for District residents. While establishing these partnerships is time consuming and can be challenging, the resulting benefits to clients should exceed these short-term costs. Simply informing community-based organizations about available services should help the legal services network reach potential clients in need.

G. Strengthen the Legal Services Network's Capacity to Serve Populations that are Difficult to Reach

Many of the District's poorest residents are difficult to reach because they have physical or cognitive disabilities, they are limited English proficient (LEP)⁶ or have poor literacy skills, or they have limited mobility because they are elderly, infirm or incarcerated. For these individuals, the barriers to civil justice are heightened substantially. Many legal services providers have developed expertise in serving one or more of these groups. Their collective knowledge needs to be harnessed so they can serve as a resource for the rest of the legal services network. Properly serving each of these difficult-to-reach populations will be a challenge that will likely require consider-

able resources deployed in creative ways. Reaching out to these populations, however, is essential to ensure that the most vulnerable members of our community have meaningful access to our civil justice system.

H. Enhance Training

Our survey showed that resource constraints prohibit legal services providers from providing more training to their lawyers and staff in a host of areas. Such training could substantially enhance the collective skills and efficiency of the legal services attorneys and staff. In particular, providing appropriate training to managers should help each provider stabilize and grow, thereby strengthening the entire legal services network.

I. Keep Up with Technological Change

Legal services providers have long lacked the tools of technology that lawyers in the private sector take for granted. Although the situation has been helped by the recent increase in funding, the legal services network still needs improved technology and sustained support to keep up with evolving technological advances.

J. Improve Data Collection

In collecting information for this report, we noted that data collection practices vary among legal services providers and are often limited. The lack of comprehensive, uniform record-keeping makes a complete assessment of the system challenging. Fortunately, the DC Bar Foundation and the providers have spent significant time in the last year addressing this issue.

Conclusion

Since the Commission's formation, much has been done to address the unmet legal needs of the low-income community. For the first time, the District has provided public funding for civil legal services. Collaboration by and among legal services providers is also on the rise. Providers have spent considerable time discussing how to improve legal services delivery and have reached out to community-based organizations to assist them in reaching low-income residents. The pro bono culture among private practitioners in the District appears to be as strong as ever.

One thing is clear, however. Much more must be done. With each step forward, we have discovered new information concerning the magnitude and complexity of the need. The changing demographics of the city have presented the legal services network with additional challenges, and there

is universal agreement that the legal needs of the low-income community will only increase over time. Funding for civil legal services must be substantially increased, and yet, increased funding is not the complete solution. The complete solution will require the entire legal services network and the community at large to collaborate in addressing the unmet needs and challenges we have identified. The ability of thousands of the poorest District residents to have equal access to justice depends on it. As stated by Chief Judge Eric T. Washington of the DC Court of Appeals:

The DC Courts' vision of being an institution that is "Open to all, trusted by all, with justice for all" will never be fully realized as long as so many of our low- and moderate-income residents lack adequate civil legal representation to help protect their basic rights and liberties.⁷

The stakes are high, but so too is the commitment of the legal services network to effectuate lasting change in the District. It can be done. It must be done.

¹ In this report, individuals are "poor" or "in poverty" if their income is below 100 percent of the federal poverty threshold and "low-income" if their income is below 200 percent of the federal poverty threshold. In 2007, the federal poverty threshold for an individual was \$10,587; for a family of four, \$21,201. See U.S. Census Bureau, "Preliminary Estimates of Weighted Average Poverty Thresholds for 2007," available at <http://www.census.gov/hhes/www/poverty/threshld/07prelim.html>.

² In this report, the "legal services network" includes legal services providers, pro bono attorneys, the courts, DC Bar, DC Bar Foundation, law school clinics and government agencies dedicated to meeting low-income residents' legal needs.

³ In this report, "legal services providers" and "providers" are nonprofit organizations where attorneys work full-time on behalf of the poor.

⁴ In this report, the phrase "estate planning" includes advance medical directives, such as health care and financial powers of attorney, living wills, guardianships or conservatorships and other legal issues related to planning for incapacity and death.

⁵ This program, established by the DC Court of Appeals, remits to the DC Bar Foundation interest generated from trust accounts holding client funds too small in amount or held for too short a duration to generate any net interest for a particular client, for distribution to legal services programs that benefit the District's low-income residents.

⁶ This report considers people to be LEP if they state on the Census questionnaire that they speak a language other than English at home and speak English less than "very well."

⁷ Statement of Eric T. Washington Before the Council's Committee of the Whole (Apr. 11, 2006).