



Delivering Justice: Addressing Civil Legal Needs in the District of Columbia

D.C. ACCESS TO JUSTICE COMMISSION

Welcome Letter

On behalf of the District of Columbia Access to Justice Commission, I proudly present *Delivering Justice: Addressing Civil Legal Needs in the District of Columbia*. This Report revisits the issues raised in the Commission's 2008 Report, *Justice for All? An Examination of the Civil Legal Needs of the District of Columbia's Low-Income Community*. Like the 2008 Report, *Delivering Justice: Addressing Civil Legal Needs in the District of Columbia* examines the civil legal needs facing low- and moderate-income residents of the District and the capacity of the legal services network to meet those needs. This Report builds on the 2008 Report's findings by comparing the needs documented then with those present today. To provide background and context to these findings, the Report incorporates insights and comments from legal services providers and other stakeholders collected during multiple, issue-based listening sessions. As a result, *Delivering Justice: Addressing Civil Legal Needs in the District of Columbia* illustrates both the evolution of needs in the District and how the provider network has evolved and adapted to meet those needs.

Much like the 2008 Report, *Delivering Justice: Addressing Civil Legal Needs in the District of Columbia* shows the devastating impact of unmet civil legal needs on low- and moderate-income District residents. It serves as an update to the Commission's comprehensive 2008 Report and as a companion to the D.C. Consortium of Legal Services Providers' publication, the *Community Listening Project (2016)*. Together, the voices of legal services providers and members of the client community provide important content and data about civil legal needs in the District. Despite the great strides described here – providers harnessing and sharing resources, innovating service delivery, increasing access to legal assistance, and strategically addressing clients' issues both systemically and through individual representation – the justice gap persists. The Report offers explanations for the persistent gap and suggestions for how to increase access to justice in the future.

The innovations and improvements to service delivery described in the Report would not have been possible

without the D.C. government's substantial infusion of resources. The Commission is extraordinarily grateful to Mayor Muriel Bowser, D.C. Council Chair Phil Mendelson, and members of the D.C. Council who have demonstrated great commitment to increasing access to justice. These strides also were made possible by the leadership and expertise of the D.C. Bar Foundation which supports the provider community through its expert management of grant funds and its capacity to foster creative approaches to the delivery of services. The Commission also recognizes the vital role that the D.C. Consortium of Legal Services Providers and its members play in advancing access to justice initiatives. And finally, we recognize the role of the D.C. Courts in creating the Commission and working to make the justice system more accessible to all.

The Commission is grateful to its own staff, Executive Director Nancy Drane and Staff Attorney Kate Rabb, for researching and writing the Report, managing ongoing data collection and analysis, and collaborating with the many partners who assisted in this effort. The Commission also appreciates the contributions of its Commissioners and of Senior Advisor Jess Rosenbaum, who offered their time and expertise throughout this Project, and the D.C. Access to Justice Foundation's Board of Directors for its support of the Commission's work.

The Commission thanks legal services providers, law school faculty, community members, court personnel, the D.C. Bar Foundation, and other stakeholders who contributed to this Report. The Report would not have been possible without their detailed survey responses, data collection, written comments, and thoughtful feedback. We appreciate the time these partners dedicated to listening sessions during which they shared valuable information about the challenges facing community members, clients, and legal services providers, and the strategies developed to move forward. We also thank the D.C. Fiscal Policy Institute which contributed data and research to help accurately illustrate the demographics of District residents and the daily issues that low- and moderate-income residents face. We are very

grateful to the D.C. Courts for their considerable efforts to gather relevant court data. Finally, we extend our gratitude to Friends of Legal Services Corporation, whose generous financial support made it possible to bring additional staffing to the Commission in order to complete this Report.

DLA Piper LLP has been an invaluable and true partner in this Project. We would especially like to thank Sara Moghadam, who managed the DLA Piper team, as well as the numerous partners, associates, summer associates, and support staff who, along with Sara, provided their time and talent. Their collective contributions were integral in completing this Report from its origins to publication. We also appreciate the leadership of DLA Piper's Pro Bono Partner, Lisa Dewey. Sara and Lisa were particularly valuable members of the team not only because of their contributions to this Report, but because they also were vital in researching and writing the 2008 Report. This background knowledge and continuity were critically important. We are incredibly grateful.

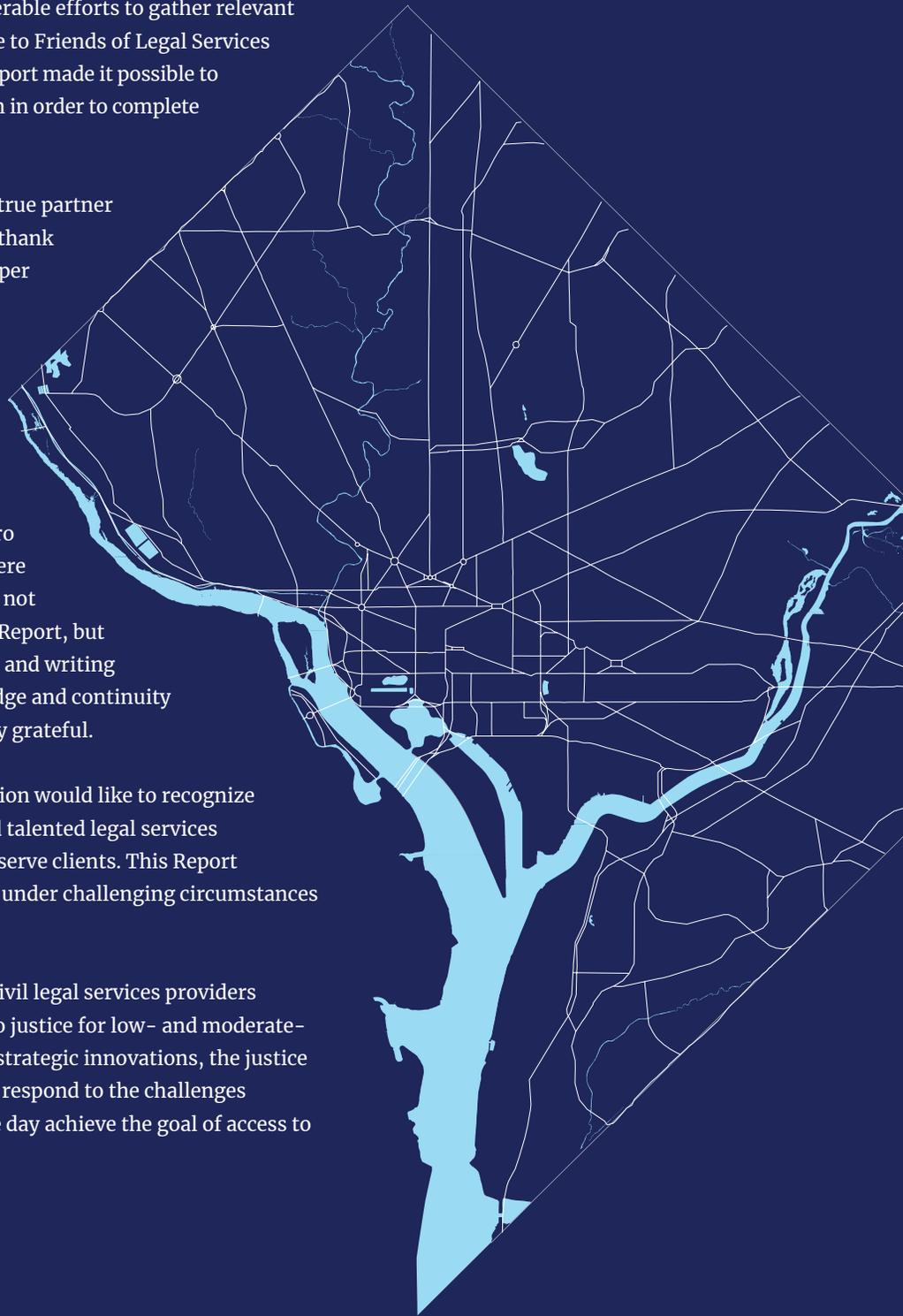
Finally, and most important, the Commission would like to recognize the work of the dedicated, resourceful, and talented legal services attorneys and staff who work every day to serve clients. This Report represents the extraordinary work they do under challenging circumstances to help District residents in need.

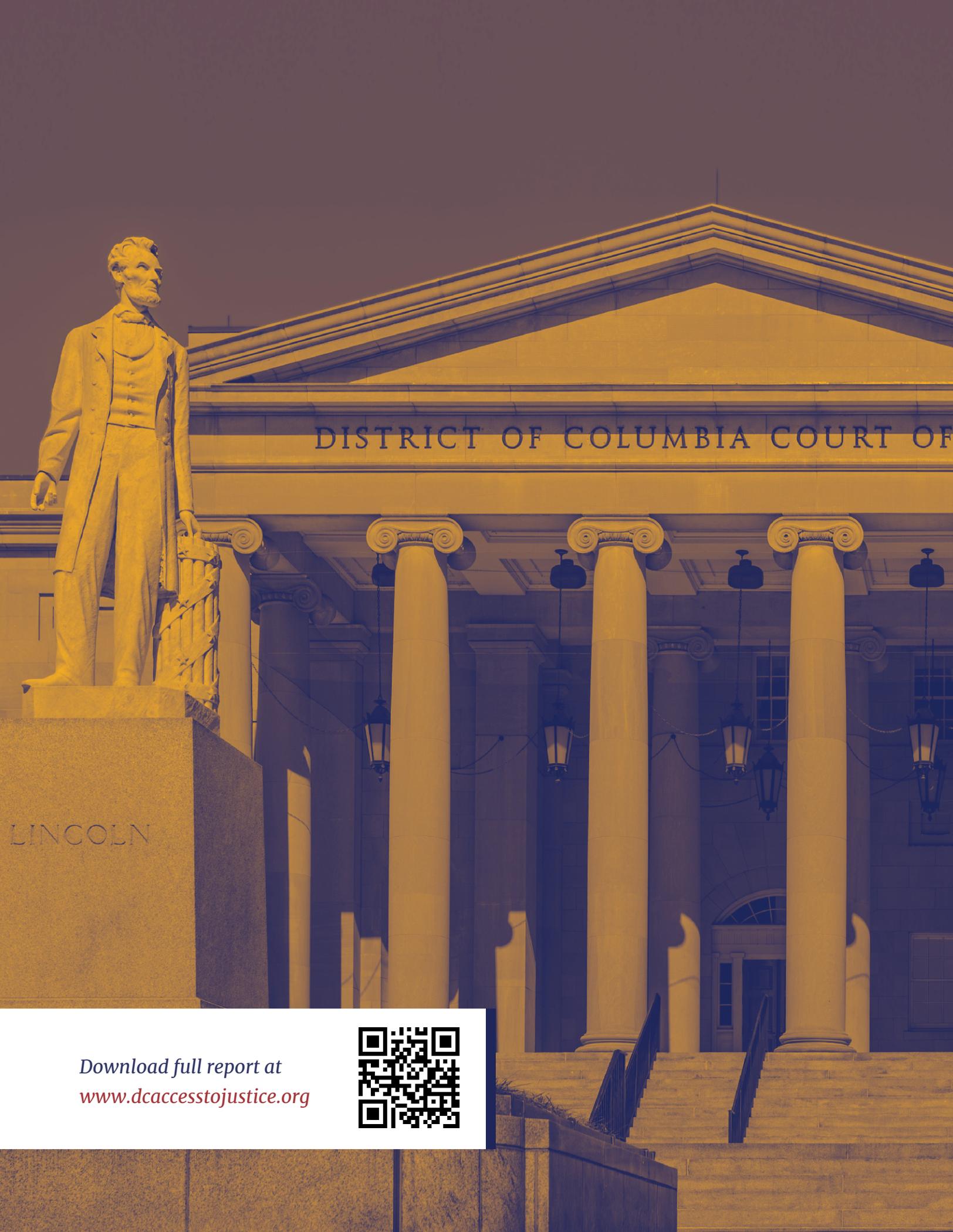
Since the publication of the 2008 Report, civil legal services providers have worked tirelessly to increase access to justice for low- and moderate-income District residents. Even with their strategic innovations, the justice gap persists. We hope that you will help us respond to the challenges identified in this Report so that we can one day achieve the goal of access to justice for all.

Sincerely,



Peter B. Edelman
Chair, D.C. Access to Justice Commission
2019





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Executive Summary

This Report documents the evolution of civil legal needs and services in the District over the past 10 years. It examines the developments that have occurred since publication of *Justice for All? An Examination of the Civil Legal Needs of the District of Columbia's Low-Income Community*, the D.C. Access to Justice Commission's 2008 Report. The Commission explores this evolution through both quantitative and qualitative data provided by legal services organizations and other stakeholders. With analysis of survey data and of anecdotal evidence gained in numerous listening sessions, the Report illustrates changes in the legal services community as providers have innovated to accommodate emerging needs, available resources, and developing priorities. The Report also details frameworks that are increasingly driving providers' work, such as a racial justice orientation, community engagement, and systemic change.

Like the 2008 Report, this Report begins with a discussion of the District's low- and moderate-income populations, including their demographics and the problems they face. Despite dramatic changes in the economy over the past 10 years, poverty post-recession remains largely the same as it was pre-recession. Nearly 1 in 6 D.C. residents, about 111,000 individuals, live below the Federal poverty line; 32,000 of these residents are children – 26% of D.C. children live in poverty.¹ Even though providers have significantly increased their reach and the volume of clients served, this unrelenting poverty perpetuates the need for civil legal services.

In addition to being widespread, poverty in the District is concentrated in certain areas and among certain populations. Wards 7 and 8 have the highest poverty rates in the City, at 26.5% and 35.7%, respectively, compared to 17.4% Citywide.² Given the high level of unemployment and limited job opportunities for unskilled workers, it is difficult for residents to escape poverty. The District's adjusted unemployment rate in January 2019 was 5.4%.³ (By way of context, the District's rate consistently tracks higher than all other states except Alaska.⁴) Consistent with the concentration of poverty in the District, the unemployment

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rate varies by Ward, with the highest levels in Wards 7 and 8. In January 2019, for example, the unemployment rate was 4.1% in Ward 3 as compared to 12.7% in Ward 8.⁵

The burden of this poverty and unemployment disproportionately affects African American residents. Residents of the Wards with the highest levels of poverty and unemployment have predominantly African American populations. (For example, 2017 Census data reported that in Ward 7, 92% of the population is African American, and in Ward 8, 90%.⁶) Furthermore, across the City, African American residents are almost eight times more likely than whites to be unemployed, according to a 2017 report.⁷ Recognizing the effects of both race and poverty on access

to justice, providers have become increasingly focused on racial justice as a guiding principle of their work. Many also have emphasized the importance of engaging community members and clients so that their lived experiences and understanding of needs help define the priorities of legal providers and the solutions they seek.

It is no surprise that the District faces an access to justice crisis given its high rate of poverty. Poverty increases the likelihood of experiencing civil legal problems and makes it more difficult to address them and recover from negative outcomes.⁸ And there are many other District residents who live just above poverty levels for whom access to justice is still out of reach. Living at or near poverty itself creates both a need for and impediment to accessing justice, but it is not the only circumstance that is associated with such challenges. As described in the Report, many of the District's low- and moderate-income residents face additional obstacles to navigating the civil legal system. Those residents include people with disabilities, those who need translation services due to being limited English proficient, Deaf or hard of hearing, the elderly, individuals who are illiterate or low-literate, the homeless, prisoners or ex-offenders, transgender and gender expansive people, veterans, and survivors of sexual assault.

Despite these barriers, the number of D.C. legal services attorneys available and the number of low-income residents served have grown substantially since the time of the 2008 Report. The increase in the number of people served is due in part to strategies and innovations that providers have implemented over the past 10 years, including: advocating for additional funding; increasing the number of full-time equivalent attorneys and other staff; and shifting the scope of their work and methods of providing assistance, including limited services. For those District residents who have access to full representation, this is crucially important, as low-income individuals with counsel experience better outcomes in legal matters than their unrepresented counterparts.⁹

Wherever possible, the Report illustrates these changes by comparing data included in the 2008 and current Reports and in an intervening Commission publication titled *Rationing Justice: The Effect of the Recession on Access to Justice in the District of Columbia*.¹⁰ In this way, readers can understand dramatic changes in the provider network in

According to the Legal Services Corporation, 71% of all low-income households nationally experienced at least one civil legal need over the past year and for most people affected, at least one of those legal problems had a severe impact on their lives.

light of financial pressures and increasing poverty during the recession. As these data show, providers were able to emerge from the recession into a period of relative strength marked by new approaches to closing the justice gap.

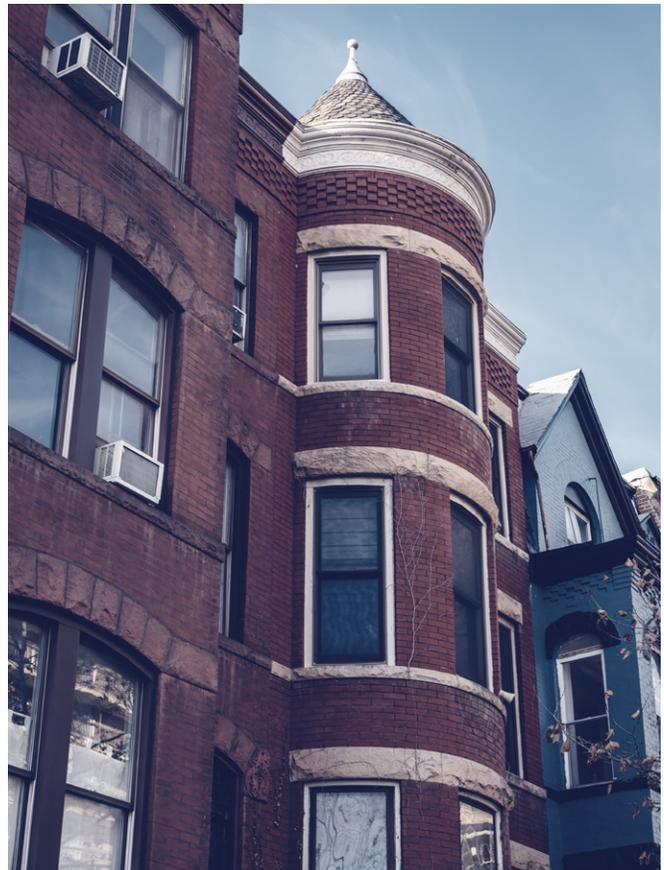
While data are crucially important for understanding access to justice in the District, it is essential to view those data in context. During multiple listening sessions, the Commission spoke with more than 100 practitioners, community members, and other stakeholders (e.g., court personnel, community organization staff) who interact with low- and moderate-income individuals in need of civil legal services. These sessions were with diverse groups of people who hold various roles and are involved in different aspects of legal practice, the justice system, and beyond – but there still emerged a unified and strongly held commitment to closing the justice gap and using legal services as an anti-poverty tool.

Though the high level of persistent poverty in D.C. makes it impossible to represent everyone in need of legal assistance, providers have made changes particularly to methods of service provision and organizational structure that have increased their capacity to serve low- and moderate-income residents. Those adaptations impact the provider community as a whole and also the individual practice areas covered in detail in this Report: Consumer; Disability and Health; Education; Employment; Estate Planning and Probate; Family and Domestic Violence; Housing; Immigration; Public Benefits; and Small Business and Nonprofit. This Report describes some critical ways in which the provider

community has evolved over the past 10 years and analyzes those changes both across the network as a whole and as manifested in the above listed areas of practice. These pivotal changes include:

- **The expansion of existing practice areas and the creation of new organizations and projects** in order to address unmet, persistent, and newly emerging needs. These changes were made possible by significant increases in the number of legal services attorneys in the District allowing providers to address the legal needs of substantially more low- and moderate-income residents.
- **The emergence of diverse and creative practice models** to address the barriers that clients experience in seeking assistance. These changes include increasing accessibility by making legal services available to clients in neighborhood offices, and through such programs as court-based legal services, resource centers, medical-legal partnerships, and community clinics. Providers also have increased access through use of limited scope representation, brief services, innovative intake models, robust translation services, and technology.
- **The development of collaborations** with an expansive range of partners including other providers, community-based organizations, the D.C. Courts, and medical institutions. Some also have prioritized collaboration with clients on a variety of initiatives to ensure that community members help shape providers' priorities and potential solutions.
- **The expansion of resources dedicated to systemic advocacy**, including increased focus on policy advocacy, regulatory and legislative projects, and appellate work. These activities complement individual client representation and allow providers to address larger systemic issues.
- **The adoption of key operational changes** in staffing that are crucial to the network's sustainability and growth. Providers have shifted resources to hire more non-legal staff in areas like development, social work, and community organizing, for example, and focusing on the importance of training on many issues including trauma-informed practice.

Though providers have largely taken the lead on development and implementation, these innovations would not have been possible without the support and leadership of many important partners. As discussed in the Report, providers could not have innovated their models and increased their capacity without generous funding from public and private sources. They could not have reached so many more clients without the help of private and government *pro bono* attorneys who donate their time and expertise to helping those in need of legal assistance. Providers also depended on their partnerships with the D.C. Courts to help increase access to justice for unrepresented litigants through advances such as on-site attorneys, modifications to court policies and procedures, and accessibility-promoting technology. The Report highlights the critical contributions of these many partners including: the Mayor and District Agencies; the D.C. Council; the D.C. Courts; the D.C. Office of Administrative Hearings; the D.C. Consortium of Legal Services Providers; D.C. area law schools; the D.C. Bar; private law firms; the D.C. Bar Pro Bono Center and *pro bono* attorneys (particularly those from private practice and the government); the D.C. Bar Foundation; and community-based organizations and providers.



As the data make clear, the legal services network has implemented changes in practice over the past 10 years to substantially increase the number of clients it serves. Yet the justice crisis remains. According to the Legal Services Corporation, 71% of all low-income households nationally experienced at least one civil legal need over the past year and for most people affected, at least one of those legal problems had a severe impact on their lives.¹¹ Large numbers of low- and moderate-income residents, however, do not receive critical legal services to help resolve these problems and mitigate the severe impacts they cause. Though it is difficult to quantify exactly how many District residents continue to navigate the courts without counsel, there are data that suggest far too many litigants remain unrepresented. In 2017, the D.C. Court of Appeals saw *pro se* participation at the time of filing ranging from 50% to 90% depending on case type.¹² In D.C. Superior Court, of cases disposed in 2017 there were high *pro se* participation rates (*see below*).

The D.C. Office of Administrative Hearings sees comparably high percentages of cases with no party represented in student discipline appeals (88%), appeals related to public benefits determinations (86%), and disputes concerning unemployment compensation benefits (91%).¹⁵

This imbalance is likely due to a variety of factors. Attitudes about the legal system and the types of life barriers discussed above lead many District residents to deal with their problems by themselves or with the help of friends or community organizations rather than by reaching out to lawyers. Among the participants of the Consortium’s *Community Listening Project*, for example, only 11.32% of its survey participants (66 people out of 590) sought legal help for a problem.¹⁶ (Nationally, low-income Americans seek legal help for only 20% of their civil legal problems.¹⁷) Those who do reach out to lawyers often find a limited number of attorneys who are available to help low- and moderate-

D.C. Superior Court *Pro Se* Participation Rates 2017



97%

of plaintiffs in small estate matters in the Probate Division.



88%/95%

88% of petitioners and 95% of respondents in the Domestic Violence Division.



83%/93%

83% of plaintiffs and 93% of respondents in divorce/custody/miscellaneous cases in Family Court.



97%

of respondents in paternity and child support cases in Family Court.



88%

88% of designated respondents¹³ in the Landlord and Tenant Branch of the Civil Division, in contrast to the 95% of plaintiffs who were represented.



75%

75% of plaintiffs in Housing Conditions cases in the Civil Division.¹⁴

income District residents. Among *Community Listening Project* participants, for example, only 59.6% of those who sought legal assistance reported receiving it.

These circumstances make clear the need to increase the capacity of providers so that they can serve more low- and moderate-income residents who seek legal assistance and conduct outreach to those who do not. Increasing public and private funding for legal services programs continues to be imperative, as is expanding the legal profession's *pro bono* commitment. Approaches such as increasing reduced fee and limited scope arrangements for those who do not qualify for free legal aid but cannot afford rates lawyers normally charge, or identifying alternatives to formal litigation, consistent with due process, to those matters that can be better handled in a non-adversarial fashion, will also expand access to justice.

Even with significant expansion of capacity, though, it is unlikely that the justice gap will ever fully close in D.C. given its concentration of poverty. As a result, it is necessary to continue reforming courts, agencies, and public systems so that they are more accessible and easily navigable for clients who either are unrepresented or who have only minimal contact with attorneys. Providers are looking ahead to the next 10 years with the same resolve as they had in the past to develop and implement new strategies to promote justice for their clients. Providers seek to pinpoint the obstacles they face to increasing access and strategies for overcoming them. Some strategies providers identified for closing the justice gap include:



Educating low- and moderate-income residents about the legal system. Many District residents do not realize that the problems they face are legal in nature and can be addressed through the civil justice

system. If residents do not see the legal system as a potential solution to their problems, they will not solicit legal help. Many providers would like to focus in the future on public education that would allow low- and moderate-income residents either to address their own problems or to seek legal assistance. Critical to these public education efforts will be ensuring that non-legal professionals who interact with the District's low- and moderate-income population receive comparable training on the legal system.



Facilitating initial contacts with providers to improve the process of connecting residents with critical civil legal services.

Low- and moderate-income District residents often cannot be served by one or more of the providers they contact. They can find themselves undergoing multiple intake processes in various locations before securing assistance. This creates a disincentive for seeking legal assistance. Providers in certain practice areas in D.C. and in other jurisdictions have improved the experience of intake and referral through coordination among organizations and use of technology. District providers stressed the importance of streamlining the process of connecting residents with legal services.



Developing and strengthening community relationships. As is made clear by

providers' efforts over the last 10 years to increase the scope and reach of legal services, legal services organizations are constantly innovating and identifying new ways to improve access to justice. Many providers have found that their goals, whether related to individual representation or systemic reform, are facilitated by community connections. Those connections range from informal information gathering to formal, institutional partnerships. Many providers agree that collaborations with community members and organizations, whatever form they take, strengthen the work of civil legal services organizations and make them more receptive and responsive to clients' needs. It is a goal of many organizations in the network to increase access to justice by strengthening community engagement efforts.



Increasing the range of available civil legal services. Legal services providers have

significantly increased access to justice over the past 10 years in part by increasing the types of services they offer. The growing availability of limited scope representation and brief services provided in a variety of settings including community-based offices, the courthouse, and local organizations, has helped reach more residents in need of assistance. Many providers would like to continue expanding the range of delivery methods. In addition, providers voiced interest in exploring ways that trained professionals who are not attorneys can serve District residents who need help navigating the justice system.



Creating and implementing technological advances to make the delivery of legal services more efficient and to increase access to justice. Technology can be used to increase the accessibility of legal services.

Advancements such as interactive forms and computer-based guided legal assistance, for example, allow more low- and moderate-income individuals to receive help than might be possible through only traditional legal representation. Many in the legal services network emphasize the need to continue developing technologies that provide residents the tools to address legal problems.



Generating tools and resources for measuring need and evaluating impact.

Legal services providers who were interviewed for the Report uniformly expressed the importance of data collection

and analysis. Data collection allows organizations to assess the need for interventions and resource allocation and to measure the impact of their work. This is important not only for guiding providers' decision-making on priorities, strategies, and programs, but also for securing and sustaining funding. Though many providers recognize the benefit of data analysis and program evaluation, few have adequate resources necessary for conducting such work. Providers emphasize the need to develop these capabilities and to secure financial support so that work in the future can be informed and driven by data.



Expanding systemic work. Over the past 10 years, legal services providers have dedicated more resources to systemic advocacy. This has allowed providers not only to serve individual clients, but also

to address the conditions and circumstances that underlie their clients' legal needs. Through appellate and multi-party litigation and policy advocacy, providers address both the proximate causes of legal issues, such as housing conditions, and the structural, such as racial injustice. Many providers urge a continued focus on systemic work, some exploring how legal services attorneys can together take on even broader systemic issues such as poverty.

The Report shows the incredible strides legal services providers have made over the past 10 years in increasing access to justice for low- and moderate-income District residents. With the support and partnership of the D.C. government, the D.C. Bar Foundation, area law firms, private funders and charitable organizations, *pro bono* attorneys, and other stakeholders, providers have greatly increased their capacity and the number of clients they serve. Despite these tremendous gains, however, there remains a vast scope of unmet civil legal needs. Although there is a complex web of social, political, and economic factors driving this need, it still is possible to create a system where more low- and moderate-income people have access to the justice they seek. The Commission is dedicated to achieving this goal. Together with key stakeholders, the Commission is committed to developing recommendations and strategies based on the findings in this Report so that every resident of the District someday will have access to justice.

It is necessary to continue reforming courts, agencies, and public systems so that they are more accessible and easily navigable for clients who either are unrepresented or who have only minimal contact with attorneys.

Conclusion: The Commission's Commitment

This Report has shown great advances in the community's efforts to address the legal needs of District residents, but also the work that still must be done to increase access to justice in the future. The community must ensure that individual District residents have equal access to the justice system regardless of income while also continuing to shine a light on the systemic forces and barriers that create or exacerbate civil legal needs such as poverty, racial and economic injustice, and social isolation. Lawyers cannot solve these problems alone, but must be part of broader efforts to identify solutions to make the District a better place for low- and moderate-income District residents.

In the next 12 months, the Commission will commit to taking the lessons of this Report and developing an implementation plan to move them towards action. The Commission will engage with the larger District community in this effort, identifying ways that we can all work together to strengthen access to justice in the District and make the legal system more accessible to all low- and moderate-income District residents. With that in hand, the Commission is confident that the decade to come will be as impactful as the one that came before.



Endnotes

1 D.C. Fiscal Policy Institute, *D.C. Must Do More to Do to Ensure Residents of Color Benefit from the District's Growing Prosperity, Census Data Show* (September 13, 2018); see also The Annie E. Casey Foundation Kids Count Data Center, *Children in poverty (100 percent poverty) in District of Columbia*, (2008-2017).

2 United States Census Bureau, 2013-2017 American Community Survey 5-Year Estimates, *Poverty Status in the Past 12 Months*, Table S1701.

3 D.C. Department of Employment Services, *Washington D.C. Economic Insights* (accessed July 16, 2019).

4 Bureau of Labor Statistics, *Local Area Unemployment Statistics, Unemployment Rates for States, Seasonally Adjusted* (May 2019) (accessed July 16, 2019).

5 See *supra* note 3.

6 Census Reporter, *Profiles of D.C. Ward 7 and Ward 8* (accessed July 16, 2019).

7 Janelle Jones, *African American and Hispanic Unemployment Rates are Higher than White Unemployment Rates in Every State at the End of 2017*, (February 20, 2018), Economic Policy Institute.

8 Patricia E. Roberts, *From the War on Poverty to Pro Bono: Access to Justice Remains Elusive for Too Many, Including Our Veterans*, 34 B.C.J.L. & Soc. Just. 341 (2014), at 342; see also Faith Mullen, J.D., and Enrique Pumar, Ph.D., D.C. Consortium of Legal Services Providers, *The Community Listening Project*, (April 2016); Legal Services Corporation, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans* (June 2017), at 25-26.

9 Rebecca L. Sandefur, *Elements of Professional Expertise: Understanding Relational and Substantive Expertise through Lawyers' Impact* (2015), *American Sociological Review* (finding that a synthesis of available evidence reveals that expanding access to attorneys could radically change the outcomes of adjudicated civil cases, stating "[t]his potential impact is notable when lawyers' work is compared to that of non-lawyer advocates... and spectacular when compared to lay people's attempts at self-representation.")

10 D.C. Access to Justice Commission and D.C. Consortium of Legal Services Providers, *Rationing Justice: the Effect of the Recession on Access to Justice in the District of Columbia* (November 2009).

11 Legal Services Corporation, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans* (June 2017), at 21.

12 D.C. Courts *Pro Se* Data appears in *Appendix I*.

13 *Id.* Designated respondents are respondents who are identified in the relevant data field as either represented by an attorney or *pro se*. For the Civil Division, the court presented *pro se* data for designated respondents only, and thus the percentages should be considered an estimate. There are a large number of cases where the data field is blank as to whether a defendant is represented or *pro se*. Some of these undesignated respondents may not have ever appeared in court, or may be involved in cases that were disposed either before a respondent appears (i.e., dismissal by the plaintiff or the court) or because the respondent failed to appear (e.g., default judgment). Some may also be due to data error.

14 See *supra* note 12

15 D.C. Office of Administrative Hearing *Pro Se* Data appears in *Appendix J*.

16 Faith Mullen, J.D., and Enrique Pumar, Ph.D., D.C. Consortium of Legal Services Providers, *The Community Listening Project* (April 2016), at 30.

17 See *supra* note 11, at 7.

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