

Public Hearing on Mayor Gray's Fiscal Year 2015 Budget Request

**Before the Council of the District of Columbia
Committee on Public Safety and the Judiciary**

Testimony of Peter B. Edelman

District of Columbia Access to Justice Commission

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Mr. Chairman and Members of the City Council, thank you for the opportunity to testify today. My name is Peter Edelman and I am a professor at Georgetown Law Center and Faculty Co-Director of the University's Center on Poverty, Inequality, and Public Policy. I am here in my capacity as Chair of the District of Columbia Access to Justice Commission. As you know, the Commission was created by the D.C. Court of Appeals in 2005 to address the scarcity of civil legal services for low- and moderate-income District residents and to reduce the barriers these litigants face in navigating the civil justice system.

I am pleased to be joined today by Chief Judge Eric Washington, Chief Judge Lee Satterfield, the President of the District of Columbia Bar, and the Executive Director of the District of Columbia Bar Foundation. The fact that these leaders take the time every year to advocate for public funding for legal services is a testament to this community's deep and unwavering commitment to equal access to justice. I am very thankful for their support today and their unflagging partnership in the many projects we are undertaking to shrink the justice gap in our city.

We are extremely grateful that the Mayor proposed \$4.278 million for the Access to Justice Program for Fiscal Year 2015. This increase in funding reflects both the monumental need for civil legal services that exists for populations living in poverty in D.C. and the tremendous difference these funds have made since the inception of the program.

As you well know, access to the civil justice system is absolutely vital for the thousands of District residents who are living on the verge of legal crisis. Even before the economic downturn, the need for legal services for individuals facing urgent legal issues far outstripped the need. While much of the economy has recovered from the worst of the recession, indigent individuals continue to suffer from the lingering effects of unemployment and underemployment, increased evictions and foreclosures, predatory lending schemes, strained public benefit programs, and elevated levels of family violence. The pivotal interventions of legal services attorneys, who every day prevent wrongful evictions and foreclosures, seek remediation of dangerous and illegal housing code violations, help vulnerable individuals to access safety net programs, and address illegal employment practices, protect those who are most vulnerable in our community. They ensure that indigent residents have an advocate by their side when their most basic human needs are in peril.

While many parts of the economy have stabilized, we continue to hear from our service providers that the demand for services, and the urgency of the problems faced by their clients,

have not ebbed. Simultaneously, total funding for the legal services network remains inadequate, forcing organizations to turn away clients with urgent, meritorious cases. The IOLTA (Interest on Lawyers Trust Accounts) Program, which has traditionally been the single largest source of non-public funding for legal services has decreased 80% since 2008 and will not recover until interest rates rebound. That alone accounts for over a million dollars each year in lost revenues. As you are well aware, because of the District's unique court-funding structure, we are not able to make up that shortfall with filing fee increases or innovations used in many other jurisdictions. As a result, the legal services network remains underfunded at a time when low-income residents, particularly those who reside in Wards 7 and 8, continue to struggle with poverty-related legal problems.

The good news is that both the District government and the private bar have increased their commitments to organizations that address the legal needs of the poor. Since its inception, the District government appropriation has been vital to ensuring that thousands of District residents have legal assistance. These funds have fundamentally transformed the legal services network by significantly increasing the capacity and reach of D.C. legal services organizations and permitting innovations that address emerging needs. As you know, the funds support approximately thirty lawyers who represent clients in the most underserved parts of our city. The funds have also doubled the number of attorneys working east of the Anacostia River, easing the transportation burden for indigent residents and helping those organizations to become known and trusted parts of the safety net in those communities. In addition, the funds have yielded innovative new programs tailored to populations that have traditionally struggled to access services.

In the last two years alone, the D.C. Bar Foundation has funded several new programs that are bringing services to deeply underserved populations. These include Ayuda's Project END (Eradicate Notario Fraud), a groundbreaking initiative to end fraudulent practices by notaries who prey on vulnerable immigrant communities. The funds support a staff attorney who helps clients with immigration and civil fraud issues and also works with law enforcement to bring perpetrators to justice. The funds also support a new collaboration between the D.C. Employment Justice Center and the Neighborhood Legal Services Program to develop a Workers' Rights Clinic to serve D.C. resident workers in Wards 5 and 7. In addition, Quality Trust received new funding to provide representation for District residents with disabilities who are facing or suffering overbroad or undue guardianships. These are in addition to the many successful programs that received renewed funding, such as the Children's Law Center's two medical-legal partnerships, Legal Counsel for the Elderly's homebound elders project, and a number of projects designed to locate lawyers in underserved communities, often partnering or co-locating with other legal or social services organizations. A full list of programs is attached.

As I have mentioned in previous years, the funds have also permitted close collaborations between the court and the legal services community to address unmet needs identified by both the judiciary and the legal services providers. This includes two extraordinary Court Based Legal Services Projects funded at the D.C. Superior Court. This Committee has heard repeatedly about the tremendously successful Landlord-Tenant Attorney of the Day Project which continues to be a powerful example of the value created by each dollar of this appropriation. As you know, this highly effective program provides same day representation to tenants who are in imminent

danger of losing their homes. These attorneys are often the last line of defense in preventing homelessness. The eight publicly-funded attorneys staffing the Project provided emergency, same day services to clients facing eviction in over 600 cases in fiscal year 2012 alone. The Project obtained nearly \$875,000 in measurable financial benefits for tenants, and that does not include the substantial economic and social benefits of helping tenants to avoid homelessness and family displacement. Two thirds of the tenants served by this Project are from wards 5, 7 and 8 which include some of the most impoverished parts of the District.

In addition to the extraordinary work performed by the publicly-funded attorneys, the project also leverages substantial pro bono contributions. Those publicly funded attorneys placed nearly 80 cases with pro bono counsel in fiscal year 2012 and provided mentoring and support to enable volunteers to handle those cases. In doing so, they greatly multiplied the impact of each of those public dollars. The publicly funded attorneys further extended the reach of public dollars by also working with the Landlord Tenant Resource Center to create and maintain self-help materials for litigants who cannot obtain representation.

Through this one project – which is only one of the highly effective and creative programs supported by the appropriation – nearly 1500 tenants and their family members were served either by legal services lawyers or by pro bono counsel in fiscal year 2012. And all of this assistance was secured by a public investment of only \$570,000.

In fiscal year 2012, the public funding permitted replication of this model in the Paternity and Support Branch to provide same day services in child support cases. In 2012, that project benefitted over 1800 D.C. residents. When we include the Project's extensive outreach and training efforts, that number jumps to more than 2000 individuals. Over 80 percent of those assisted reside in the District's four poorest wards. Both of these projects address needs that the legal services community has long struggled to meet and which the Court itself identified as damaging service gaps. I cannot overstate the value of this close collaboration between the courts, the Commission and the service providers. This partnership ensures that the public funding is targeted at broadly recognized needs and that projects at court are designed to be maximally effective.

The funds also support the nationally recognized Community Legal Interpreter Bank which ensures that non- or limited-English proficient residents can communicate effectively with their attorneys. The Bank now has 130 interpreters available to provide services in 42 different languages (this includes American Sign Language and Certified Deaf Interpreters) and in fiscal year 2013 has already provided 1762 telephonic interpretations, more than 200 live interpretations, and 60 translations. Further, the Loan Repayment Assistance Program, a critical tool for recruiting and maintaining a talented and diverse corps of legal services lawyers, supported twenty-five attorneys serving ten legal services organizations.

These numbers and project descriptions rightly focus our attention on how these funds change the lives of individual District residents, many of whom have true access to justice only because of these dollars. We cannot overstate, however, the significant effect these funds have on the broader administration of justice, the well-being of the community, and the public fisc. By keeping families economically stable, legal services attorneys reduce reliance on more costly

public benefits systems. By keeping clients housed, they ease the burden on our tattered homeless services network. By moving clients from local to federally-funded public benefits programs, they reduce the burden of these programs on the local budget. Publicly funded attorneys also provide other invaluable benefits to the community by enforcing the city's building codes, preserving safe and affordable housing, and uncovering predatory lending schemes. Their presence in courtrooms helps the court to identify barriers for pro se litigants, deters institutional litigants from "cutting corners" or unduly pressuring pro se litigants, and helps the court to identify systemic issues to examine.

We greatly appreciate the Mayor's support of the Access to Justice Program. His proposed budget for fiscal year 2015 funds the program at \$4.278 million, more than a half million dollar increase over the current year's level of \$3.75 million. We are also deeply grateful that the private bar has increasingly become an equal partner in funding access to justice work and that its contributions to direct legal services organizations have also increased. Only a strong commitment across all segments of the Bar will help us to close the justice gap. The increase in funding from both the public and private spheres, commensurate with their joint commitment to equal access for all, is crucial.

As you know, the Commission works hard to increase funding from private sources. Every year, the Raising the Bar Campaign infuses substantial additional monies into the legal services community. As the Committee may recall, the Campaign establishes revenue-based benchmarks for law firm donations to legal services organizations. The District is fortunate to have one of the most generous legal communities in the nation both in terms of financial and pro bono support. Many firms have been giving generously to the legal services community for a long time. However, that local commitment is not universal. The Campaign works hard to persuade more firms to support local legal services and to convince those already giving to do more. It publicly recognizes and celebrates firms that give .11% (platinum level), .09% (gold level), or .075% (silver level) of their D.C. office revenue per year to support the provision of legal services.

The thirty-six firms that met benchmark levels in 2012 together donated nearly \$3.6 million to organizations that serve indigent District residents with urgent legal issues. This represented a more than \$830,000 cumulative increase for all participating firms over the previous year's giving levels. This year, the number of participating firms jumped to forty-three, which together gave over \$4 million to local legal services organizations. This represents over a one million dollar increase in giving by these firms since their entry into the Campaign. This steady increase each year in the number of participating firms and the resources they are infusing into the legal services network is a critical statement of the private bar's commitment to closing the justice gap. The Commission believes that this robust private-public partnership has been greatly incentivized by the District government's longstanding support. As a matter of principle, the legal community recognizes that the burden of ensuring equal access to justice is a shared responsibility and not one that can or should be borne by public dollars alone.

The Commission is committed to maximizing a range of other resources – notably pro bono service -- to optimize support for legal services and magnify the impact of every dollar spent. The Commission works in close partnership each year with the D.C. Bar Pro Bono Program and

the Court to increase and recognize pro bono service by private attorneys. For the third year, our organizations are administering the District of Columbia Courts Pro Bono Honor Roll. The Honor roll, which recognizes attorneys who provide 50 hours or more of pro bono service – or 100 hours of service or more for a higher recognition category – honors the thousands of attorneys who donate their time and expertise to help those who cannot afford counsel. It also challenges firms and individual attorneys to increase their pro bono commitments at a time when business pressures are testing the historic pro bono generosity of the District’s legal community. This year over 4200 attorneys registered for the Honor Roll with over 2500 qualifying for the higher recognition category. The Honor Roll includes attorneys from all segments of the bar, including more than one hundred forty law firms and scores of solo practices, local and federal government agencies, and non-profit organizations. As the program relies on self-nomination, we strongly believe these numbers will continue to grow as the program becomes more widely known.

Pro bono attorneys have long been an integral part of the District’s legal services delivery system. Barring a massive infusion of resources, or a fundamental overhaul of the legal services delivery system, the demand for legal services will continue to outstrip what legal services organizations can provide. Pro bono contributions are indispensable to meeting client needs. However, these crucial pro bono contributions are only possible when there is a stable legal services network to identify cases, and provide training and supervision. Without the Access to Justice funds, and the stable legal services infrastructure they assure, many of these important law firm resources would go untapped, and thousands more clients would be denied the assistance of counsel.

The Commission also continues to work closely with the Court to identify and address barriers to self-representation. Even the most efficient and well-resourced legal services network will not be able to meet the ever-expanding need for assistance. Clients with exacerbating challenges – such as mental illness, physical disability, trauma caused by family violence, and language access issues – will have to remain a priority and providers will continue to turn away clients with potentially meritorious cases. Given that reality, it is imperative that we develop a range of pro se resources and implement practices that help self-represented litigants navigate our tribunals. The Commission is deeply grateful for the Court’s leadership on this front. Last year the Commission worked with the D.C. Bar Pro Bono Program to convene a Working Group to examine the expansion of limited scope representation, a practice that is being effectively utilized in other jurisdictions to expand the availability of counsel for low-income and modest-means litigants. That Working Group submitted a proposal to the Superior Court and the Bar Ethics Committee which are currently under consideration. The Commission is also working with the Court of Appeals to address dismissal rates in Unemployment Insurance appeals cases.

Thank you for the opportunity to testify today about this vital program and the work the Commission is doing to increase resources and augment the impact of every dollar expended. I urge the Council to support the funding level proposed by the Mayor¹. Each year the Bar Foundation is unable to fund critical work that would greatly increase access to justice for those most in need. These additional dollars will fund sound, effective proposals that in past years could not be supported. We greatly value the Council’s leadership in this area and I look forward to answering any questions you may have.

ⁱ In terms of the breakdown of funding between civil legal services grants and the loan repayment program (LRAP), we support the Mayor's proposed division of the funds such that LRAP is funded at no more than \$200,000 with the remainder of funds allocated to civil legal services grants. The Bar Foundation projects that \$200,000 will be sufficient to meet LRAP requests in FY 2015. That is largely because the lawyers otherwise eligible to apply for this program are moving outside of D.C. to control their housing costs, rendering them ineligible for continued participation.