



**Performance Oversight Hearing, D.C. Office of Victim Services and Justice Grants
Before the D.C. Council Committee on the Judiciary & Public Safety**

**Testimony of Nancy E. Drane, Executive Director
District of Columbia Access to Justice Commission**

March 4, 2021

Chairman Allen and Members of the Council, thank you for the opportunity to testify today. My name is Nancy Drane, and I am the Executive Director of the District of Columbia Access to Justice Commission (“Commission”). The Commission was created by the District of Columbia 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. The Commission is chaired by Professor Peter B. Edelman of Georgetown University Law Center, Vice Chaired by Legal Services Corporation President Emeritus James Sandman, and its members include D.C. Court of Appeals, D.C. Superior Court and D.C. Office of Administrative Hearings judges, past Presidents of the D.C. Bar, and other leaders from the private bar, legal services organizations, law schools, and business and community leaders.

It is my honor to testify today to discuss the impact of the Access to Justice Initiative (“the Initiative”), which is under the purview of the Office of Victim Services and Justice Grants (“OVSJG”). OVSJG, led by Director Michelle Garcia, has worked with the D.C. Bar Foundation (“DCBF”) to administer these important funds. I should add that OVSJG’s support of providers’ responses to the newly intensified problems for residents stemming from the pandemic – including those outside of the Access to Justice Initiative – have been especially important and appreciated by the community. I am also pleased to be testifying today alongside DCBF Chief Executive Officer Kirra Jarrett and thank her for the foundation’s leadership in guiding the development of this program.

The Commission is extremely grateful to the Mayor and to the D.C. Council for their long-standing support of the Initiative, and in particular to this Committee, which has championed its work from the beginning. The District's fiscal year 2021 budget includes over \$12 million in funding to promote access to justice in our community through the Access to Justice Grants Program, the District of Columbia Poverty Lawyers Loan Repayment Assistance Program, and the Civil Legal Counsel Projects Program. These FY21 funds are distributed as follows: \$7,189,000 to the Access to Justice Grants Program (including the Community Legal Interpreter Bank); \$300,000 to the District of Columbia Poverty Lawyers Loan Repayment Assistance Program; and \$4,600,000 to the Civil Legal Counsel Projects Program. Taken together, these programs represent an integrated and cohesive investment in access to justice.

Our community has been through a great deal over the past twelve months as it has responded to the COVID-19 pandemic, and we know the disproportionate health and economic impact felt by the District's African-American population.ⁱ The important role of the Initiative in the District's safety net during this time cannot be overstated. But it is important to remember that the District faced a civil justice crisis long before the COVID-19 pandemic emerged. Just this past weekend, the Washington Post published one in what we expect to be a series of editorials about civil justice, and the title says it all: "*You can lose your kids, home and freedom without ever seeing a lawyer. It's a profound injustice.*"ⁱⁱ

In December 2019, the Commission released a report entitled *Delivering Justice*.ⁱⁱⁱ In that report, the Commission examined the legal needs facing low- and moderate-income District residents, the barriers they experience in addressing them, and how the District's community of civil legal services providers has evolved to serve them. In the report, the Commission explains how the circumstances experienced by thousands of low-income District residents – poverty, disability, homeless status, and beyond – increase the likelihood of experiencing civil legal problems and impede a person's ability to address and recover from them. The report explores the areas where these District residents experience the most problems – issues like consumer protection, disability, education, employment, probate, family/domestic violence, housing, immigration, public benefits, and beyond. And it detailed the staggeringly high number of District residents – including those who

have active cases in our local courts and tribunals – who proceed without the assistance of a lawyer due to limited resources.^{iv}

That was where our community was *before* the pandemic, and those problems have not gone away. In fact, they've worsened. That is why the Initiative has and will continue to play such a vital role in our community. Our testimony will focus on the impact of these important programs on the District's low-income community, the need they are addressing, and the complementary role these public funds play in the support for our legal services network.

The Role of the Access to Justice Initiative

The Commission is incredibly grateful for the support and leadership of the Council in promoting this annual appropriation, which has helped transform our civil justice system. Through the important work of OVSJF and DCBF, the legal services network has:

- increased the capacity and reach of District legal services organizations and permitted innovations that address emerging needs;
- enabled legal services providers to increase the delivery of services where they are most needed, in communities and neighborhoods of highly concentrated poverty;
- supported legal services in a wide variety of substantive legal areas, particularly housing, and enabled providers to address the unique legal needs of traditionally underserved populations;
- funded a community interpreter bank, which helps low-income limited English proficient and deaf residents access services from more than 40 nonprofit legal services providers; and
- kept experienced legal services lawyers working in our community through the D.C. Poverty Lawyer Loan Repayment Assistance Program, which provides loan repayment assistance that makes it possible for them to remain working in District legal services organizations and serving District residents.

The Initiative has also been leveraged to promote innovations in practice, service delivery, and operations including: the growth of existing practice areas and establishment of new organizations and projects; adoption of diverse and creative practice models; collaboration with partners and engagement of clients; work on systemic advocacy; and staffing changes for sustainability and growth.

Vulnerable District residents have a fairer shot at civil justice when they have access to legal assistance and representation through the *ATJ Grants Program*. Further, the urgent need for representation in eviction-related cases led to the creation of the *Civil Legal Counsel Projects Program* (“CLCPP”) in fiscal year 2018, a program that is now making a marked difference in our community.

Examples of how these funds keep District families in their homes, increase service access for vulnerable District residents, and protect consumers in the marketplace are described below, as well as a sense of the pandemic-related need providers are addressing in the community. *A full list of the FY21 Initiative grants is included in DCBF’s testimony.*

Eviction Defense: Civil Legal Counsel Projects Program

CLCPP supports six legal services providers that offer free eviction defense legal services to low-income tenants in the District. The funds increased the presence of free legal services at the courthouse to help address inequities in representation in eviction proceedings, where the vast majority of landlords benefit from legal representation while the vast minority of tenants do not. Three of the most notable accomplishments of the program identified through robust evaluation include: (1) the creation of a multi-organization collaboration to create a centralized point of entry (the Landlord Tenant Legal Assistance Network (“LTLAN”)); (2) the sharing of resources and best practices across members of the network; and (3) with additional staff, expanded capacity for eviction defense in the District.

The impact of the program thus far is compelling. From January through December 2020, the CLCPP network served a total of 1,733 low-income tenants.^v Because of the D.C. Courts closing in March, the number of tenants served has been severely curtailed:^{vi} CLCPP served 873 tenants between January and March 15, 241 tenants between March 16 and June 30, and 619 between July and December 30. It is worth highlighting here that eviction defense services are still needed despite the existence of a moratorium. Across the 283 cases with outcome data that were closed *before* the public health emergency period, 82% of tenants retained possession of the unit—50% retained possession outright and 32% had to comply with certain terms in order to stay. This is only a fraction of low-income D.C. residents at high risk of evictions, however.

Though a current eviction moratorium is reducing immediate need, it is certainly not eliminating it. This committee recently presided over a hearing dedicated to exploring the impact of the moratorium, and you heard compelling stories of residents actively experiencing this devastating crisis, even in light of the moratorium.^{vii} Between June 1, 2020 and December 31, 2020, the LTLAN line helped close to 1,000 tenants remotely. Providers have also come together to plan collaboratively with D.C. Superior Court around serving litigants with eviction-related needs. CLCPP attorneys sat in on active court hearings to provide assistance to unrepresented litigants, and sent outreach letters to 1,561 tenants with open cases to provide information about their legal rights during the pandemic and how to access free legal assistance.

Nevertheless, we know that our civil justice system will be overwhelmed when the moratorium is lifted. The latest Census Pulse Survey data (for February 5, 2021 through February 15, 2021) show that nearly 30,000 District adults (more than 15% of DC adults) report they are behind in rent, and nearly 32,000 District adults (nearly 17% of all DC adults) saying they have little or no confidence in their ability to pay next month's rent.^{viii} Over 77-90 percent of these households are headed by a person of color. While we hope that rental assistance programs will address some of these needs, there will surely be thousands of District residents who will still face the threat of eviction.

Our community, including our courts, is relying on a well-resourced legal services network to deal with the onslaught of eviction matters that will come as we emerge from the crisis, both previously-filed cases and new cases that are brought against tenants whose financial circumstances have been impacted by the economic consequences of the pandemic. In an environment where landlords are represented 95% of the time and tenants only 12% of the time, civil legal aid will be critical to ensuring that tenants have the ability to present defenses and negotiate terms with their landlords that might avoid a devastating and health-altering eviction.^{ix}

Keeping District Families in Their Homes.

The *Access to Justice Grants Program* also supports a wide variety of non-eviction, housing-related programs, including:

- **Preserving Affordable Housing.** These funds also help low-income residents challenge unlawful rent increases, building condition violations, and voucher terminations – preserving existing affordable housing stock. During the pandemic, legal services providers are fielding more calls from tenants whose landlords are failing to take reasonable steps to protect tenant health and safety during the pandemic and expect to see an increase in requests for assistance regarding housing conditions as the pandemic continues and landlords decrease maintenance.
- **Preventing Foreclosures.** These funds help low-income homeowners who are unfamiliar with the court process defend against foreclosures that are based on deed theft, mortgage fraud, equity stripping scams, or tax sales.
- **Safeguarding Low-Equity Housing Cooperatives.** These funds also help tenant groups develop and maintain the administrative infrastructure, governance, and regulatory compliance of tenant-owned limited equity cooperatives in order to prevent problems that cause these affordable housing cooperatives to convert to market rate housing.

Increasing Service Access for the Most Vulnerable District Residents.

The *Access to Justice Grants Program* has always aimed to ensure services are available to some of the District’s most vulnerable, underserved communities, including:

- **Keeping Families Safe.** These funds have long supported services to domestic violence survivors, the vast majority of whom access the courts without legal representation. These individuals are particularly at risk now due to the social isolation and quarantine required by the pandemic. Providers have mobilized to offer support in the form of emergency legal services and crisis safety planning. Busy before the pandemic, some providers now report a 300% increase in calls for assistance, with an increase in episodes of violence, harassment, stalking and lethality – a circumstance they expect to continue.
- **Managing Health Crises and Disability.** Medical-legal partnerships that place lawyers alongside staff at some of the District’s highest-volume primary care providers are also supported through these funds. The District was already facing significant public health challenges before the pandemic, but health-related concerns have taken on a heightened state of urgency due to the vulnerabilities brought on by COVID-19. Legal services providers continue to help low-income D.C. residents stay stable and healthy by pursuing and maintaining local and Federal benefits and gaining access to housing, food, and medications, and they continue to identify legal remedies for health problems, such as uncontrolled asthma due to mold-infested homes. The funds also robustly support other services for adults, children, and students with disabilities.
- **Assisting Seniors Aging in Place.** These funds support attorneys who help low-income seniors draft wills and advance directives, review public benefits and fight scams, and deal with housing-related issues. This is a long-standing gap in our civil legal services network, with only one legal services provider able to serve low-income D.C. elders in estate administration, for

example. Now, the need for this help has increased among the low-income, Black, and Latinx populations that are most at-risk for COVID-19. These communities were already less likely to have wills and estate plans, leading to complex probate proceedings after a death in the family and threatening intergenerational transfer of property. Legal help to navigate these complicated systems is essential.

- **Modeling Language Access.** These funds help low-income residents who are limited English proficient and Deaf to access services from 42 nonprofit legal services providers through the District’s one-of-a-kind Community Legal Interpreter Bank (“Bank”). Language access has always been a priority due to the District’s diversity, but equity in accessing legal services is more critical during the pandemic when information is vital, services are more difficult to access, and so much is constantly changing. Residents continue to receive interpretation over the phone and video, the Bank has provided special training to providers on holding interpreted meetings remotely, and the Bank has pivoted to holding interpreter trainings online. During the first 11 months of 2020, there were 214 requests placed through the Bank for its interpreters, specially trained to work with lawyers and their clients in out-of-court settings, the Bank translated 463 documents, and provided on-demand telephonic interpretation on 4,022 instances. One provider said that the Bank has been “indispensable” during the COVID-19 pandemic, including allowing it to conduct ‘Know Your Rights’ trainings over Zoom using simultaneous interpretation.

Protecting District Consumers in the Marketplace and Workplace.

The *Access to Justice Grants Program* also supports projects that promote economic justice in our community, including:

- **Stabilizing Credit for Low-Income Residents.** Funded programs help residents fight predatory lending and illegal debt collection schemes and avert negative court judgments and credit reports, which can affect housing and employment opportunities. The District saw an alarming number of these consumer problems before the pandemic, and providers anticipate a tsunami of new consumer and debt-related legal issues as billing cycles and wage loss create a toxic personal financial environment for thousands of already vulnerable D.C. residents. One provider reported that its docket of financial scams and frauds perpetrated against DC residents has risen 40% in the past 12 months since the pandemic hit. The expected onslaught of consumer and collections cases as community members begin to receive medical bills, collection bills, and lose temporary debt collection protections will add to the already crushing volume of individuals needing legal help. These concerns are particularly acute for the undocumented, who have always been highly susceptible to exploitation and fraud and are not eligible for many pandemic-related assistance programs. Providers also expect a marked increase in bankruptcy filings where legal assistance will be needed.
- **Protecting Wages and Jobs.** These funds help teach low-income workers their rights, ensure they receive the wages they have earned and help them recover stolen wages, and fight discrimination and harassment. Unemployment in the District has always been high, with a

disproportionate impact on people of color. Although workers continue to bring a wide range of employment-related issues to now virtual clinics, requests have clustered around difficulties accessing, and questions about, unemployment insurance, terminations, and layoffs due to the pandemic, and failures to pay wages or other benefits. Over 176,000 people have applied for unemployment insurance in the District since the pandemic began on March 13, 2020, compared with about 37,000 *total* claims filed in 2019.^x Before the pandemic, litigants in unemployment-related matters at the D.C. Office of Administrative Hearings were unrepresented by counsel the vast majority of the time. Now, that tribunal is experiencing four times the typical number of unemployment appeals, expected to grow as additional claims are processed. This remains a continued, and growing, need.

- **Ensuring Access to Benefits.** Helping District resident secure benefits for which they are entitled has always been an important part of this program. Even before the pandemic, lawyers provided essential, on the ground support to District residents to ensure they had access to crucial benefit programs. While this system was already challenging to navigate, with the pandemic, many qualified applicants for crucial safety net programs lack the ability to complete online benefits applications or recertifications and are more likely to face improper benefits terminations or denials due to unfamiliarity or system errors as an overwhelming number of new applications are processed. Providers have worked with government agencies, such as the Department of Human Services and the Department of Health Care Finance, to ensure that they create new processes that are accessible to the client community. Several providers have also created dynamic, regularly updated resource guides to assist clients and the larger District community. Yet, we continue to need lawyers on the ground to help District residents in this area.

Access to Justice Grants Program funds also support other important efforts, such as reentry services for those navigating the civil consequences of past criminal involvement, securing the rights of those in our considerable District immigrant community, and beyond. During the first six months of 2020, ATJ grantees served about 31,000 District residents, accepted almost 4,000 cases, placed 555 cases with pro bono lawyers, and conducted 147 community legal education sessions. These critical services continue to be outpaced by the growing need for free legal services in the District.

The Importance of Representation

National and local data demonstrate that giving individuals greater access to legal information and opportunities for representation leads to better individual and community outcomes. Studies highlighted in our *Delivering Justice* report show that represented tenants were more likely to avoid an eviction judgment; non-detained immigrants with legal counsel prevailed at a far greater rate; and

benefits claimants were much more likely to succeed when represented by a lawyer.^{xi} In addition, *Delivering Justice* profiles systemic advocacy efforts that resulted in improvements more broadly benefiting the District’s low-income community, from addressing building-wide housing code violations, to promoting justice-related policy changes, to decreasing the load on medical institutions by combatting health-harming legal barriers through medical-legal partnerships, to identifying other systemic obstacles to justice.^{xii}

Loan Repayment

The third component of the Initiative, the *DC Poverty Lawyer Loan Repayment Assistance Program* (“DC LRAP”), is also a critical tool for recruiting and maintaining a talented, passionate, and diverse corps of legal services lawyers. These poverty lawyers work at nonprofit legal services providers and have a salary range from \$45,000 to \$89,000, with an average debt of \$205,563. DC LRAP provides each eligible attorney a one-year, interest-free, forgivable loan, of up to \$12,000 per year. The District’s LRAP continues to be one of the most generous publicly-funded LRAPs in the country. In FY20, DCBF provided awards to 69 attorneys at 19 different legal services organizations living in the District with the opportunity to pay their monthly student loan debt, thereby supporting their commitment to provide free, high-quality legal assistance to the D.C. community.

The Broader Impact of these Funds

Finally, the larger community impact of the Initiative is significant. Funded programs help form the safety net in many District communities, such as those East of the Anacostia River, where the number of attorneys has doubled since program inception. This not only eases the transportation burden for low-income residents needing legal help, but it also has resulted in these organizations becoming known and trusted parts of the community.

The funds promote creative community alliances such as medical-legal partnerships, which place attorneys alongside medical staff at some of the District’s most high-volume providers of primary medical care. Through these programs, attorneys meet young patients’ legal needs in the areas of education, housing, and access to health care when facing urgent medical episodes. Legal

services providers have developed numerous partnerships with trusted community partners to deliver legal information and better connect District residents to legal services. One grantee organization, for example, conducts community outreach (now remote) on debt-related matters by partnering with a community organization in Ward 7. Another organization partners with and supports tenant groups' work on the preservation of affordable housing. There are countless other examples of this important community work.

The District government's leadership in committing these public funds has also allowed legal services organizations to maximize a range of other resources. For example, legal services providers magnify the impact of every public dollar invested through the recruitment, training, and support of private lawyers performing pro bono service in the District. Pro bono contributions are indispensable to meeting client needs but are only possible when there is a stable legal services network to identify cases, develop resources, and provide training and supervision.^{xiii} Without these public 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 District's commitment to civil justice also serves as a model to all segments of the community. The increase in funding from both the public and private spheres, commensurate with their joint commitment to equal access for all, is crucial. The Commission is grateful that the private bar has increasingly become a partner in funding access to justice work and that its contributions to direct legal services organizations also have increased. Each year, the Commission recognizes the contributions of the legal community through the Raising the Bar in D.C. Campaign.^{xiv} The Commission believes that this robust private-public partnership has been greatly incentivized by the District government's long-standing support.

At their core, the numbers and project descriptions described in our testimony demonstrate how the District's commitment to these programs changes the lives of individual District residents, many of whom have effective access to justice only because of these appropriations. However, it is also important to recognize the significant effect the 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 costlier public benefits systems. Keeping clients housed lessens the need for homeless services. By moving clients from local to federally funded public

benefits programs, they reduce burdens on the local budget. And through their work, they help enforce and strengthen District law that has been established to protect its residents. Our civil legal services network also provides invaluable benefits to the administration of justice by helping our local courts and administrative agencies identify and eliminate systemic barriers that deny unrepresented litigants access to justice and builds faith among constituencies in the functioning of the justice system.

CONCLUSION

Thank you for the opportunity to testify today about these vital programs. The District government's leadership in establishing and supporting the Initiative has helped countless District residents secure the legal assistance they need to meet vital human needs, like housing, family stability, and public benefits, and in doing so, helps make the District a more just, stable community. That said, we know that the scope of unmet civil legal needs in our community is vast. We depend on our continued collaboration with the District government to adequately fund legal services and promote strategies for change. Along with other stakeholders who make possible the provision of civil legal services, we can move closer to achieving access to justice for all.

There is no higher function of government than to ensure that all of its residents, no matter their economic status, have equal access to justice. As Thomas Jefferson said, "[t]he most sacred of the duties of a government is to do equal and impartial justice to all its citizens." You and the District government have embraced this most fundamental of obligations through the funding of the Initiative.

I look forward to answering any questions you may have.

ⁱ The contrast between the experiences of Black and White District residents is significant. Black District residents, just over 45% of the population, represent almost 75% of COVID-related deaths and almost 50% of COVID cases. White residents, 42% of the population, represent approximately 12% of COVID-related deaths and almost 26% of cases. D.C. Government, Coronavirus Surveillance available at <https://coronavirus.dc.gov/data>.

ⁱⁱ *Editorial: You can lose your kids, home and freedom without ever seeing a lawyer: It's a profound injustice*, THE WASHINGTON POST, February 26, 2021 available at <https://www.washingtonpost.com/opinions/2021/02/26/noncriminal-cases-right-to-lawyer-representation/?arc404=true> ("The bad news — and there's a lot of it — is that millions of Americans continue to find

the odds stacked heavily against them in legal proceedings they are forced to navigate alone, confused by the rules and outmatched by state or private adversaries. In fact, it's not just bad news. Too often, it's a profound injustice.”)

ⁱⁱⁱ D.C. Access to Justice Commission, *Delivering Justice: Addressing Civil Legal Needs in the District of Columbia* (December 2019) available at https://dcaccessjustice.org/assets/pdf/Delivering_Justice_2019.pdf.

^{iv} Despite the current investment in funding civil legal services, we see thousands of District residents with legal problems go unrepresented in civil justice matters – percentages like 83-93% of those dealing with child custody or other family law issues; 75% of those trying to address housing conditions; 88% of those facing eviction, and beyond. At the D.C. Office of Administrative Hearings, we see even higher percentages. For example, no party was represented in 88% of student discipline appeals, 86% of appeals related to public benefits determinations, and 91% of disputes concerning unemployment compensation benefits. *Delivering Justice*, *supra* note iii at 4, 17, 203-211.

^v These CLCPP numbers are in addition to those cited below regarding the Access to Justice Grants program.

^{vi} For example, CLCPP providers served 619 tenants from July to December 2020, but more than twice this number (1,372) from August to December 2019 (one month less).

^{vii} D.C. Council Committee on Judiciary and Public Safety, Committee on Housing and Executive Administration, and Committee on Human Services, *HR24-0011 - Examining the District's Legislative Prohibition on Evictions During the COVID-19 Pandemic*, February 4, 2021, available at <https://lms.dccouncil.us/Legislation/HR24-0011>.

^{viii} U.S. Census Bureau, Household Pulse Survey (Week 24: February 5-15, 2021) available at <https://www.census.gov/data/tables/2021/demo/hhp/hhp24.html>.

^{ix} A recent National study shows the direct relationship between eviction and subsequent COVID infection, arguing that eviction prevention is a critical intervention to address racial health inequity. Benfer, Emily and Vlahov, David and Long, Marissa and Walker-Wells, Evan and Pottenger, J.L. and Gonsalves, Gregg and Keene, Danya, *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy* (November 1, 2020), *Journal of Urban Health* (2020), available at <https://ssrn.com/abstract=3736457> or <http://dx.doi.org/10.2139/ssrn.3736457>

^x D.C. Department of Employment Services, *Unemployment Compensation Claims Data* (through February 26, 2021) available at <https://does.dc.gov/publication/unemployment-compensation-claims-data>.

^{xi} *Delivering Justice*, *supra* note iii at 14-15.

^{xii} *Id.* at 58-63.

^{xiii} Each year, the D.C. Courts, in partnership with the Commission and the D.C. Bar Pro Bono Center, recognize pro bono attorneys who provide 50 hours or more of pro bono service – or 100 hours of service or more for a higher recognition category – to help those who cannot afford counsel. In 2019, 4,977 attorneys registered for the Honor Roll, with 2,943 qualifying for the higher recognition category of 100 plus hours. The Honor Roll includes attorneys from all segments of the bar, including more than 176 law firms and individual practices, as well as federal and local government agencies, corporations, associations, law schools and public interest organizations.

^{xiv} As the Committee may recall, the campaign establishes revenue-based benchmarks for law firm donations to legal services organizations. While the District is fortunate to have a generous legal community both in terms of financial and pro bono support, with many firms having given generously for years, the community can always do more. The campaign works hard to persuade more firms to support local legal services and to convince those already giving to do more. In 2019, the 44 firms that met benchmark levels collectively donated \$6.3 million to organizations that serve low-income District residents with urgent legal issues, which represents a \$3.2 million dollar increase in giving by these same firms since they joined the Campaign. Significantly, these figures do not include the millions of additional dollars in individual philanthropy provided by private law firm attorneys annually to the legal services network.