

**Council of the District of Columbia
Special Committee on COVID-19 Pandemic Recovery
Public Oversight Hearing**

**AN EQUITABLE END TO SAFETY NET PROTECTIONS PUT IN PLACE
DURING THE COVID-19 PANDEMIC**

Friday, May 21, 2021

**Testimony of Nancy E. Drane
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Good afternoon Councilmembers. I am Nancy Drane, Executive Director of the D.C. Access to Justice Commission. The Commission was created by the D.C. Court of Appeals in 2005 to address the barriers low- and moderate-income District residents experience within the civil justice system.ⁱ Thank you for the opportunity to testify today about how to ensure District residents have access to justice as we emerge from the COVID-19 pandemic.

In our view, an equitable end to safety net protections in the District means *both* the availability of resources and help for those who need it *and* the ability of individuals to actually utilize the support programs in a meaningful way. This has always been true, but now especially so in light of the circumstances of the pandemic. The District's primary focus should be to ensure District residents receive the maximum benefits to which they are entitled, and as soon as possible. To further that goal, the District should support access to justice strategies that facilitate creative and nimble approaches through partnerships with community and legal services organizations in getting the word out about available benefits, foster these organizations' demonstrated skill in helping individuals access and navigate public benefits systems, and equip them with the resources they need to provide direct support to District residents to help resolve individual and systemic problems they identify. Legal services will also be critical to protect District residents as emergency protections expire and the expected flood of suits against residents for money and related civil legal problems materialize.ⁱⁱ

The Impact of the District's Safety Net Protections

You will hear today about the real life impact of the safety net protections enacted by the D.C. government and D.C. Council on the District's low- and moderate-income community. Simply stated, these protections were instrumental in keeping likely thousands of District residents stable, safe, and healthy. I have had the occasion to meet with peer Commissions frequently during the pandemic and have discussed this issue on a national scale. The District was and continues to be a leader in making this a community priority.

Research shows a strong correlation between safety net protections as a "primary pandemic mitigation strategy" and health equity.ⁱⁱⁱ It is sobering to read data that demonstrate that lifting

moratoriums can have negative health consequences,^{iv} particularly knowing the vast racial and economic disparities we are seeing in our own community with respect to COVID infection and mortality.^v While the availability of vaccines has brought us to an important moment of transition, there remains a portion of District residents who are unvaccinated and still at risk.^{vi} This makes it all the more critical that we emerge from these safety net protections thoughtfully.

Even with protections in place, it is well documented that tenants have faced concerns about housing conditions and habitability. This is one of the areas that legal services providers have reported seeing an increase during the pandemic. Further, projections demonstrate that the volume of filings in areas like eviction, foreclosure, debt, and bankruptcy will surely rise^{vii} as we emerge from the pandemic, even with the availability of direct cash benefits to District residents. We've previously highlighted work by researchers like Matthew Desmond^{viii} who captured the devastating consequences of civil justice problems like eviction in his work, Evicted.^{ix} As Desmond says, "eviction isn't just a condition of poverty; it's a cause of poverty." We've also shared with you the data that demonstrates beyond a doubt that those living in poverty are more likely to face civil legal needs that go beyond eviction – problems with accessing public benefits, physical and mental health needs, family instability, educational loss, and the like.^x This data was gathered under normal circumstances – and would surely be far graver if measured during and immediately following a pandemic.

The complexities of the problems experienced by low-income District residents, now exacerbated by COVID-19, are profound. These DC neighbors lost hours at work in retail or the restaurant industry, they were unable to work or search for work because they had to be home with children monitoring virtual school (or addressing other childcare needs), and were often caring for elder family members – all at the same time as they were experiencing COVID-19 at higher rates and with more fatalities than other communities in DC. Incidences of domestic violence have spiked during the pandemic, one of the leading causes of homelessness. Many of our Black and brown residents are facing grief, anxiety, and trauma related to COVID-19 in addition to facing the monetary losses and devastating life consequences that come with them.

This context underscores the need to ensure District residents have access to justice as they emerge from the safety net protections put in place during the COVID-19 pandemic. The primary goal is and should be ensuring that District residents gain access to a broad range of benefits to which they are entitled – rental and housing assistance, unemployment insurance, utility support, food assistance, medical insurance, and beyond. But it will be critical that we use all the "tools in our toolbox" to advance this goal, and this includes access to legal information and services.

Access to Justice Interventions as Part of COVID-19 Response and Recovery

We know that legal services providers have and will continue to be on the front lines, notifying their clients about available resources, helping them address the barriers they experience in

applying, and providing critical feedback to the Council and District government to improve accessibility and distribution. In just one example, even during the eviction moratorium, a coordinated landlord and tenant legal help line has fielded thousands of calls for help. Access to legal services will continue to be critical as District residents face wrongful denials, errors in calculating benefit awards, and legal disputes that need to be litigated in our administrative and court tribunals. Lawyers are also key partners with the District government in protecting DC vulnerable residents from fraud and other predatory conduct that is on this rise during uncertain times such as these, particularly the threat of notario fraud rampant in our immigrant communities.

As the District shores up its safety net as we emerge from the COVID-19 pandemic, legal services must be part of the solution. As you know, each year the Commission advocates in support of the *Access to Justice Initiative*, an OVSJG program that is administered by the DC Bar Foundation.^{xi} These critical funds support legal services organizations that work directly with District residents to vindicate the rights and benefits that they are entitled to and protect their rights if legal proceedings are brought against them. The District government has also championed other targeted programs that offer legal help, such as the Immigrant Justice Legal Services (IJLS) program that offers vital immigration legal services to D.C. residents.

The reality is that these programs are already under-resourced. In past testimony we've talked to you about the complexity of the court system and the stunning number of litigants who go without access to legal representation – upwards of 80-90% in many critical, high-volume areas like eviction, family law, and debt.^{xii} In a December 2019 report, *Delivering Justice*, the Commission detailed the resources legal services providers devote to helping their clients access rights and benefits to which they are clearly entitled, let alone providing legal advocacy where there are more complicated issues to resolve. In short, even before the pandemic, the District faced a civil justice crisis – a crisis that has undoubtedly worsened in the shadow of COVID-19. In early 2020, *before* the pandemic, the Commission reached out to the Mayor to request a significant increase in funding to allow our civil justice system to serve more people and pursue innovative solutions to make it more accessible to District residents to better address this crisis. We renewed that call in our FY22 budget request.^{xiii} Similarly, the IJLS participants are seeking increased funding for legal services and language access services commensurate with the increased demand for services expected post-pandemic. For the District's considerable immigrant population, legal expertise is often required to help understand how benefit programs will impact their immigration status. Families seeking family law relief, eviction relief, consumer help, and public benefits will need access to lawyers who understand the potential immigration consequences of obtaining this relief.

Legal services organizations are at the ready to work alongside the District government and community partners to help the District emerge from the pandemic better, but can only do so with additional financial support secured through local or Federal funds.

For meaningful results, the District needs to partner with trusted brokers in the community that have relationships with the DC residents whom we want to make sure benefit from safety net programs. Legal services providers are among these community partners, but they are not alone. The District should consider partnerships with the faith community, medical providers, and other individuals to whom District residents go for support. It is important to recognize that District residents *are already* applying for these programs. The Council has heard testimony today and at other recent hearings that demonstrate that many of these District residents appear to be experiencing real barriers to access, the universality of which is striking. Programs like unemployment insurance and STAY DC have to work better before we lift these safety net protections.

Equitable access requires that these programs be administered with fidelity to important access to justice principles, such as language access, sensitivity to literacy level, and with special considerations for populations with identified access limitations, such as District elders, individuals with disabilities, survivors of domestic violence, the undocumented, and more. Principles of plain language, clarity (and accuracy) around eligibility, and a transparent process are essential. And while technology has certainly emerged as an important tool during the pandemic, we cannot assume it is equally available to all District residents. We need to ensure District residents have access to technology, the skills to use it as it needed, and the ability to tolerate and troubleshoot the glitches that will undoubtedly occur.

To conclude, an access to justice approach to an equitable end to safety net protections put in place during the COVID-19 pandemic should include the following approaches:

- Existing coordinated projects should be expanded to offer targeted, pandemic-related support, such as those currently funded by the *Access to Justice Initiative*. This includes support to develop a coordinated entry point for DC residents to access legal services more efficiently, without having to call multiple agencies to find help.^{xiv} Many jurisdictions are using Federal funds^{xv} to expand or create new access to justice projects in areas like housing^{xvi}, foreclosure^{xvii}, debt^{xviii}, unemployment^{xix}, and other civil justice needs^{xx} – as well as supporting projects to help individuals connect with the help they need through coordinated entry services.
- Remote access resources need to be readily available throughout the community. Computer kiosks/public access workstations and the like should be available in our most underserved communities to address the ‘digital divide,’ help District residents process benefits applications, ease access to legal and other services (i.e., physical and behavioral health), and allow for video participation in court hearings, appointments, and other events. This could be pursued through partnerships among the DC government, libraries, community hubs, and other locations, and would build on remote sites the DC Courts have already developed during COVID-19.^{xxi}
- Other technology solutions should include: (1) availability of technology hardware (e.g., hotspots, tablets, laptops, webcams, videoconferencing equipment) to District residents

and those that serve them (e.g., non-profits, District agencies) at community locations. These could be made available to loan out to District residents, especially those with accessibility issues (e.g., individuals with disabilities, elders, those who are homebound); (2) expanded broadband access in underserved communities; (3) access to other forms of technology (e.g., Lifeline mobile phone program, mobile banking, etc.); and (4) instructional training for District community members on basic use of technology, such as expansion of DC Public Library's accessibility program for people with disabilities.

- Pursue the development of robust community education in areas like consumer issues, employment, housing, and public benefits, including in-person training, videos, apps, social media campaigns, and other tools to help District residents understand the benefits they are entitled to and to ease access to these programs. Special attention should be paid to ensure broad language access. Training and outreach materials should be made available to DC government agencies, social service organizations, client communities, and other partners to help them counsel District residents about addressing pandemic-related needs. Resources to support enhanced case management, outreach, and other strategies will be critical. Many legal services and community organizations are already involved in the development of such materials.^{xxii}
- Finally, the District should continue partnering with justice tribunals like the DC Office of Administrative Hearings and the DC Courts as those institutions triage the pandemic-related needs of litigants coming to court. The DC Office of Administrative Hearings in particular is on the front lines of addressing issues with the administration of many of these public benefits programs. The vast majority of litigants at D.C. OAH do not have access to a lawyer and are unrepresented.^{xxiii} Expanded self-help resources like full-time Resource Center staff, self-help materials produced and available, and expanded access to video technology to allow for video (vs. audio) hearings could make a significant difference in advancing justice in this forum.

Conclusion

As we said at the outset, our primary goal should be ensuring that the District and its residents maximize all safety net benefits available through local and Federal funding. District residents need to receive cash and other benefits in order to work towards a more stable existence. And we need to make sure that these programs are working before we lift essential safety net protections. Partnerships with legal services organizations and other community partners will be critical to ensure that District residents actually access the support programs and in a meaningful way.

We are fortunate to have a strong community of professionals and community advocates in the District, as evidenced by the strong and broad participation in today's hearing. This includes our legal services network, which has been on the front lines of serving District residents since the

moment the pandemic began. As we prepare to emerge from the COVID-19 pandemic, we must pursue thoughtful and deliberate strategies that will enable District residents to truly “come back better.” The District government cannot do this alone. It needs to partner with trusted brokers in the community who are engaging with DC residents who we must ensure receive the benefit of Federal and local assistance. The Commission and our justice partners are at the ready to promote this work through the *Access to Justice Initiative* and other means.

Thank you again for the opportunity to testify. We are grateful for our partnership with the D.C. government and D.C. Council on pursuing access to justice for all.

ⁱ For more on the membership and work of the Commission, see www.dcccesstojustice.org.

ⁱⁱ Just this week, the White House and U.S. Department of Justice acknowledged the need for greater investment in civil legal aid and access to justice. See <https://www.whitehouse.gov/briefing-room/statements-releases/2021/05/18/fact-sheet-president-biden-to-sign-presidential-memorandum-to-expand-access-to-legal-representation-and-the-courts/> (White House Fact Sheet); <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/18/memorandum-on-restoring-the-department-of-justices-access-to-justice-function-and-reinvigorating-the-white-house-legal-aid-interagency-roundtable/> (White House Memorandum); <https://www.justice.gov/opa/pr/attorney-general-launches-review-reinvigorate-justice-department-s-commitment-access-justice> (Department of Justice Press Release and memorandum).

ⁱⁱⁱ 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*, *Journal of Urban Health* (November 1, 2020), available at SSRN: <https://ssrn.com/abstract=3736457> or <http://dx.doi.org/10.2139/ssrn.3736457>

^{iv} Leifheit, et al., *Expiring state eviction moratoriums and Covid-19 incidence and mortality*, available at bit.ly/ExpiringCOVID19EvictionMoratoriums.

^v See, e.g., APM Research Lab, *The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.*, available at <https://www.apmresearchlab.org/covid/deaths-by-race>.

^{vi} See <https://coronavirus.dc.gov/data/vaccination>

^{vii} For a snapshot of District tenants surveyed to be behind on rent and confidence level on ability to pay future rent, see U.S. Census Bureau, *Household Pulse Survey*, available at <https://www.census.gov/programs-surveys/household-pulse-survey.html>.

^{viii} For more on Matthew Desmond and his work, see <https://sociology.princeton.edu/people/matthew-desmond> and <https://evictionlab.org/>.

^{ix} Desmond, Matthew, *Evicted: Poverty and Profit in the American City* (Crown Books, 2016), <https://www.evictedbook.com/>

^x Legal Services Corporation, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans* (June 2017) (in the year surveyed, 71% of low-income households experienced at least one civil legal problem, including problems with domestic violence, veterans’ benefits, disability access, housing conditions, and health care), available at <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>.

^{xi} To learn more about the *Access to Justice Initiative*, see <https://dcccesstojustice.org/access-public-funding/> and <https://www.dccbarfoundation.org/our-grantees>.

^{xii} D.C. Access to Justice Commission, *Delivering Justice* (December 2019), available at www.dcccesstojustice.org/reports.

^{xiii} The Commission’s budget request for the *Access to Justice Initiative* is available at: <https://dcccesstojustice.org/wp-content/uploads/2021/02/ATJC-FY22-Budget-Request-Final.pdf>.

^{xiv} The District has long needed a coordinated entry point for DC residents to access legal services more efficiently. DC has a particularly complicated network of organizations that offer help, such that it can be overwhelming and confusing for District residents to navigate and actually find the help they need. These barriers have become all the more significant during COVID, with the stakes even higher. While successful coordinated intake exists in specific issue areas, there is no single point of entry across all areas of civil legal aid. Coronavirus Relief Funds (with our recovered share) and/or Fiscal Recovery Funds have been used in other jurisdictions to support such projects; this is a particularly good use for one-time funds that could build up the technology infrastructure, etc. For example, CRF funds were used in Minnesota (\$3.5M) to support remote access, technology, and a website to promote access to legal services. The DC Bar Foundation (that administers the Access to Justice Initiative) is actively developing a Coordinated Intake and Referral project, but funding is required in order to make it happen. Support for a project like this will help DC residents get the right type of help, and more quickly.

^{xv} For more about American Rescue Plan funding opportunities in the access to justice realm, see the Justice in Government Funding Matrix [HERE](#). A running summary of how jurisdictions are using these funds is available [HERE](#).

^{xvi} ERAP 1 and ERAP 2 funds are being utilized across the country to support eviction defense and diversion programs to make sure individuals access rental relief. ERAP guidance defines housing stability services to include those services which “enable eligible households to maintain or obtain housing ... [such as] legal services or attorney’s fees related to eviction proceedings and maintaining housing stability.” Legal services organizations in DC are currently helping residents process STAY DC applications. Even in *pre-court* diversion, it is essential that tenants have access to legal assistance since landlords almost always have lawyers representing their interests. ERAP funds are supporting housing/eviction programs in Connecticut (\$20M across 2 years in Governor’s proposed budget); Oklahoma (\$2.6M); Michigan (\$7M); Wyoming (\$1M); Long Beach, CA (\$2M) among others.

^{xvii} Homeowner Assistance Funds are also being tapped to help with foreclosure prevention services. Federal guidance says up to 5% can be used for housing counseling and/or legal services. Lawyers and paralegals can be used to support homeowners with homeowner assistance fund applications so that legal services can be part of the triaging effort to get as many high priority, eligible applications processed to approval and as quickly as possible. Existing foreclosure prevention programs could be better utilized with additional support. Homeowners Assistance Funds will be used in Washington state (\$2.5M) to support legal services in foreclosure.

^{xviii} Coronavirus Relief Funds (with our recovered share) and/or Fiscal Recovery Funds are supporting other COVID-related needs. These funds can be used to “respond to COVID-19 or its negative economic impacts through assistance to households, small businesses, and nonprofits, or aid to impacted industries.” Similar open-ended language about CRF generated millions for legal aid nationally and the same is expected for the new FRF. Existing legal services projects could be expanded to help more DC residents facing debt issues; legal services can be a front line resource to help facilitate the distribution of unmet needs funds/cash transfer benefits, promote financial wellness, and combat fraud. Legal services will be essential to help indebted District residents negotiate terms with creditors. CRF and FRF have been used to support legal aid projects in Massachusetts (\$8.6M for housing); Michigan (\$4M for housing); Pennsylvania (\$8M for eviction/debt/domestic violence/technology); Cook County, IL (a portion of \$3.5M project focused on eviction/debt/foreclosure project) among others.

^{xix} *Id.* These funds could be used to address the District’s crushing unemployment benefits backlog and need for appeals. During a D.C. Council hearing last week, DOES reported that while 114,150 people have been paid benefits, over 39,700 people were deemed “monetarily ineligible,” by DOES and may be in need of legal or other services to resolve those issues. This tracks with the uptick in unemployment compensation appeals (4x normal) being experienced at the DC Office of Administrative Hearings. Legal aid could help at the front end by ensuring thorough, complete and appropriately documented applications speeding administrative decisions and to assist with appeals for meritorious cases.

^{xx} *Supra*, note xviii.

^{xxi} See D.C. Courts website for more information on remote hearings and remote sites, at <https://www.dccourts.gov/services/remote-hearing-information> and <https://www.dccourts.gov/sites/default/files/Remote-Hearing-Sites-Tip-Sheet-3.pdf>.

^{xxii} See, e.g., <https://www.lawhelp.org/dc/classroom/dc-covid-19-resource-links> (D.C. Bar Pro Bono Center); <https://www.legalaiddc.org/covid-19-resources/> (Legal Aid Society of the District of Columbia); <https://www.childrenslawcenter.org/covid19resources> (Children’s Law Center);

[faq](https://www.aarp.org/legal-counsel-for-elderly/covid-19-information/) (Tzedek DC); <https://www.aarp.org/legal-counsel-for-elderly/covid-19-information/> (Legal Counsel for the Elderly).

^{xxiii} See *Delivering Justice*, *supra* note xii, at 17 (noting percentage of litigants at DC OAH who went without representation.)