

DC Access to Justice Commission Response to DC Courts Strategic Plan Survey

(November 2021)

Survey available at https://www.surveymonkey.com/survey-taken/?sm=Zyg1XtDa1f3sZMxTh3tU0i3KWRBZKfG6wUQMesB07NhyvIR_2Buobz7IYgdlyfQyLGLwFDKXE7IJeGJpgt54OH9vXR9gcOVjIEAJJoERIGucmo_3D

Part 1: Rank each of these as low, medium, or high priority. Add comments for each that is determined to be high priority.

(a) Foster fairness and equal treatment of Court participants. HIGH

- The Court should continue to expand and prioritize its efforts to incorporate process simplification into its strategic approach. This is a fairness and equity issue. As long as non-lawyers – the vast majority of Court litigants – are expected to comply with rules and procedures that were developed with lawyers in mind, we will have an uneven playing field. The Court is currently thinking about process simplification through its ‘reimagining’ effort and its partnership with NCSC to examine landlord & tenant, mortgage foreclosure, and debt collection. A wholesale examination of Court process and procedure, *from the user perspective*, is critical. It would be good to see these efforts expanded and prioritized Court-wide.
- Incorporating user testing and user-centered design principles into these Court reform efforts is critical. Court reform efforts should be driven by the non-lawyer Court user experience. (Although arguably, what is good for non-lawyer Court users will more often than not be good for the lawyers and the Court as well.) User-centered design is an emerging discipline that has important scholarship with practical applications emerging from places like Stanford’s Legal Design Lab, under Prof. Margaret Hagan’s leadership.
- The Court should identify and develop strategies to address persistent problems that disproportionately impact low-income litigants or litigants without access to counsel. This includes areas like defaults, which are more common on dockets with a higher volume of unrepresented litigants. Court systems have conducted controlled studies to test different approaches to communicating with litigants that might ease default rates, which can have devastating consequences for litigants. This is just one example of a type of persistent problem where strategic solutions could be developed.
- Fairness principles also translate to how litigants interact with judicial officers and Court staff. The Court should continue to offer training and other supports to ensure that judges and staff treat all litigants and attorneys equally – particularly in areas of the Court where unequal access to representation leads to power imbalances between parties. Judges and Court staff should be trained and sensitized to issues like trauma that can impact how litigants navigate the Court experience.

(b) Promote racial equity in the Courts. HIGH

- The Court should continue to ensure that judges and Court staff are trained on cultural and racial biases. Many of the decisions judges make are not wholly objective; parental fitness, child custody, even credibility. All of these are susceptible to the influence of conscious and unconscious bias, and Court representatives should be well trained to identify and combat these tendencies. The Court should continue to offer these trainings.
- The Court – in partnership with external stakeholders – should continue to explore ways to improve the pipeline for lawyers of color to become successful judicial candidates.
- The Court should examine its role in dismantling systems that perpetuate racism within the Courts. The Racial Equity Initiative should be a very positive way to explore these challenging but important issues.

(c) Improve timeliness of case resolution. HIGH

- This priority and that below it (reduce wait times) are both elements of the process simplification priority we described above. DC Courts’ efforts to simplify its processes should lead to greater efficiency in the Court, including timeliness of case resolution. It will also lead to a more accessible and manageable experience for the vast majority of litigants who proceed without the assistance of counsel.

(d) Reduce wait times for persons conducting Court business. HIGH

- The Court should work to schedule matters for specific windows of time rather than making litigants wait to be called, often for lengthy time periods. The Court can tackle this problem by exploring creative case calendaring options. There is a perception that institutional litigants or attorneys who represent multiple clients (e.g., landlords’ attorneys) appear to have more power with respect to scheduling; this perception should be addressed and corrected.
- High volume Courts in particular should address this problem. These cases have the highest percentage of unrepresented litigants, the type of litigants for whom excessive wait times can negatively impact employment, childcare obligations, etc. Often, litigants choose to sign agreements rather than lose time waiting for their case to be called. While the Reimagining the Courts effort will address this issue head on, a deeper understanding of the attitudes that fuel this practice would be productive in designing solutions.

(e) Enhance the Courts’ capacity to serve diverse and underserved populations. HIGH

- As discussed above, the Court should explore ways to evince more flexibility for those facing unique barriers, such as inflexible work schedules, childcare commitments, and other priorities. Remote participation, assistance by phone, and other strategies could have a significant impact on this problem.

- A Commission committee reviewed a report on ways the Court might improve the Court experience for those individuals with disabilities. We will provide it under separate cover.
- The Court has made great strides in addressing the unique language access needs of Court litigants. This should continue, with a special emphasis on improving the experience for those limited English proficient Court users who are participating in remote hearings. Issues around simultaneous v. consecutive translation and other barriers have been mentioned as areas for focus and improvement
- The immigrant community has at times been apprehensive to access the Courts. District Courts are extraordinarily sensitive to immigration issues, so this may be a perception rather than a reality problem, but specific outreach to the immigrant community to see the Courts as places to seek help when needed would be beneficial.

(f) Increase the use of easy to understand language in Court orders, forms, and proceedings. HIGH

- While all of these priorities are ranked as ‘high’ priorities, this is particularly important. Plain language is essential in Court written materials (formal as well as informal) as well as in the oral comments made by judges and Court staff. In the past, the Commission has shared plain language best practices materials with the Court. We will provide again under separate cover. Standardization of expectations around plain language and a consistent and systematic approach to reviewing and modifying Court materials is essential. Judges and Court staff should be encouraged to use consistent language with Court users to promote an equal justice experience. While we wouldn’t want the Court to be unnaturally saddled by “scripts,” this type of written guidance and training can be beneficial for both sides of the communication. The use of videos and other “explainer” materials would also aid in this effort.
- The Court should continue to prioritize forms that are most likely to be used by or sent to unrepresented parties, using best practices for simple, straightforward communication. The Court should ensure that pro se litigants are involved in the creation of new forms and website info/instructions to ensure that they are as accessible as possible to non-lawyers.
- Training should be provided to all of those who answer phones or interact with Court users so that they have the tools they need to be able to provide clear, straightforward, information.

(g) Expand assistance to litigants without attorneys. HIGH

- While expanding access to lawyers and encouraging pro bono is important and should continue, hard evidence exists that we will never achieve sufficient access to lawyers for all who need or desire them. The Court must then embrace additional approaches to offering self-help beyond legal representation.
- The Court should adopt a more comprehensive approach to self-help, ensuring that it is equally available, in equal measure, across all Divisions.

- The Court should develop stronger training and guidance around the issue of distinguishing between legal information and legal advice to maximize the helpfulness of its staff. Many staff are so afraid to cross that line that they hold back on providing ethically permissible, helpful assistance. The Commission has provided models from other jurisdictions that are helpful guides and tutorials for Court staff on navigating that line, and would be happy to share under separate cover.
- The Court should continue to support litigant access to assistance for those without an attorney. This can be done through partnerships with legal services providers, accommodating the needs of providers with respect to scheduling or process to enable them to serve as many litigants as possible.
- The Court should also expand the Court's navigator program and invite others to create programs of their own. Beyond physical navigation within the Court complex (or virtually), navigator programs have the potential to provide litigants with substantive information to meaningfully participate in their cases and make decisions around the requirements of the process.

(h) Expand public access to Court records and data. HIGH

- Easy access to a full range of Court information is essential. The Court should continue to prioritize this, as it has during the course of the pandemic. Data should be readily available to the public and Court users across a range of topics, such as volume of case filings, representation status, case outcomes, etc. One recent obstacle flagged by providers is access to archived documents; the Court should prioritize allowing for access to that special category of records.

(i) Expand use of technology to accomplish Court business. HIGH

- The Court should continue its embrace of technology for both formal and informal Court interactions. Remote hearings should continue and should become part of the fabric of the Court.
- The use of chat and other types of technology features should be available across the Court.
- The list of interactive Court forms available to Court users should be expanded, and there should be a seamless way to file those forms from the interactive form creation platform.
- E-filing, while an important advancement, should be made easier to use for non-attorney Court users.

(j) Enhance remote access to hearings and services in the community. HIGH

- There are many Court proceedings (e.g., status hearings) that can be held remotely so that litigants do not have to take time off from work to travel to the Courthouse for a brief appearance. Expansion of remote access has the potential for increasing access to justice for pro se litigants and low-income individuals (and others) who have jobs that make it difficult to take a day off for Court business.

- Remote sites should be made permanent, with potentially more services offered (including live, on-site help).

(k) Enhance community outreach to provide information about the Courts to the public.

HIGH

- Community outreach is important; the Courts should look to community stakeholders as partners in reaching and serving District residents.
- The Court should partner on efforts to infuse more legal, community education throughout the District. Demystifying the system goes a long way to ensuring meaningful participation.
- The Court should also establish avenues to receive feedback in real time, like a virtual suggestion box. Feedback should be able to be provided anonymously to account for reluctance from those with active cases.
- The Court should continue to expand its efforts to seek community stakeholder feedback as early as possible to ensure it is being considered and then take care to provide regular updates to those stakeholders as processes continue. Ongoing and regular engagement is preferable to periodic outreach efforts – although both have their place.
- The Court website should be revamped to be more user-friendly and easily navigable.

Please identify additional priorities the Courts should address in the next Strategic Plan.

- If we must set priorities, focus on strategies that directly address high volume, high stakes cases with a large number of unrepresented litigants (e.g., eviction, foreclosure, child support, protection orders, child custody). These cases have the biggest impact on the day-to-day lives of District residents.

Do you have any further suggestions about how the Courts can better serve members of the community represented by your agency or organization?

- The Commission has been doing planning and discussion around Courts-related issues as part of our “Justice for All” effort, and several areas that we have identified are captured in the listed priorities – especially (f), (g), (i), (j), and (k). The Commission areas include:
 - Comprehensive inventory of and improvements to self-help resources and services across the Court.
 - Special focus on Self-Help forms, including consistent standardization, process for prioritizing and approval, and for external stakeholders to provide feedback on current or needed forms.
 - Forums to allow for ongoing and consistent user, community, and provider feedback to inform improvements and reforms in DC Courts – to include user testing/design for Court procedures.
 - Increased access to non-lawyer navigators to assist Court users.

- As the Court continues with its strategic planning, we suggest that it also use other tools to collect feedback from external stakeholders beyond the strategic planning survey, such as the types of focus groups held as part of the 'reimagining the Courts' effort. The Commission would be happy to help convene people as helpful.