



JUSTICE FOR **ALL?**

An Examination of the Civil Legal Needs of the District of Columbia's
Low-Income Community

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On behalf of the District of Columbia Access to Justice Commission, I am proud to present, *Justice for All? An Examination of the Civil Legal Needs of the District of Columbia's Low-Income Community*. *Justice for All?* documents the array of civil legal needs facing low-income District residents and the capacity of the legal services network to respond to those needs.

Our report finds what many in our community know all too well—unaddressed civil legal problems can have a devastating impact on a person or family, and there are far too few legal resources available to help people in need. Perhaps nowhere is this more apparent than in the *pro se* statistics provided by the DC Superior Court, where, for instance, only three percent of tenants in Landlord/Tenant Court and two percent of litigants involved in domestic violence cases are represented by counsel. It is difficult to imagine a person of means deciding to proceed unrepresented in these situations. While we have made strides to help residents who cannot afford counsel, we still face numerous challenges in making equal access to justice a reality in the District of Columbia. This report provides a roadmap on how we can overcome these challenges.

Justice for All? is the most comprehensive legal needs report ever done in the District of Columbia. We are grateful to the legal services providers that responded to our lengthy surveys and provided valuable input along the way, to the community-based organizations that told us about the needs of their clients, and to the DC Courts and Office of Administrative Hearings, which provided a detailed analysis of the number and percentage of *pro se* litigants in various types of cases. We are also extremely grateful to the law firm of DLA Piper LLP (US). DLA Piper took the lead role in researching and drafting this report *pro bono*. Numerous partners, associates, summer associates, and support staff worked on this project. In particular, Sara Moghadam, Shani Dilloff, and Jennifer Zador from DLA Piper put in countless hours on all aspects of the report and managed the DLA Piper team throughout the process. Their work has been stellar. Simply put, this report would not have been possible without them.

I hope you will join us in responding to the challenges we have identified in this report, as it will take all of us working together to make a difference.

Sincerely,



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I Executive Summary



A. Overview of the Issue

In criminal cases, a defendant facing the risk of incarceration is entitled to an attorney even if he or she cannot afford one. In most civil cases, however, a person is not entitled to an attorney, even though civil legal proceedings can affect things we hold most dear—custody of our children, our physical safety, our ability to work and need for shelter, just to name a few. Accordingly, most people who are not wealthy are forced to navigate their way through the civil legal system alone, too often with negative consequences. This is true for financial reasons but also because persons living in poverty may not even know that they have legal rights or that a lawyer can help them. This problem is particularly prevalent in the District of Columbia (hereinafter the District), where approximately 20 percent of residents live in poverty and approximately 33 percent are low income.¹

B. The Importance of Legal Representation

Access to counsel is not just a convenience that makes the litigation process more efficient. Legal representation can dramatically affect the outcome of a given case. Lawyers advise clients about substantive rights, claims or defenses they may not know they had. They help clients navigate their way through complex laws and procedures that govern the judicial system. These laws and procedures can be confusing even to those with formal education and economic means.

Lawyers also make a difference in situations far removed from the courtroom. They offer advice, resolve problems before they turn into court cases, advocate for laws and policies that better serve the interests of their clients and provide transactional services—such as drafting a will or advanced medical directive so that end-of-life wishes will be respected. Every day, lawyers in the District perform these valuable services for individuals with the resources to pay for them. Low-income residents need and deserve them as well.

The consequences of unaddressed civil legal problems can be devastating and spill over into other aspects of life. A person who has been evicted, for example, may also have difficulty holding down a job and keeping children in school. A person unable to remain in this country due to immigration problems may leave behind a spouse and children or have to uproot them. For a person with limited resources, losing disability benefits could lead to homelessness. And, if unable to secure legal protection from an abusive relationship, a woman may have to leave her job and her home, subjecting her children to financial insecurity and instability.

C. Legal Services for the Low-Income Community Benefit All District Residents

Unmet legal needs can impose substantial financial burdens on the District. For example, the District may have to pay for the emergency shelter of a family wrongfully evicted from their home simply because they were unaware of valid defenses and did not fight the eviction. Or, the District may have to provide public assistance to supplement the income of a worker whose employer has failed to follow wage and hour laws.

The decision to invest in legal services for the District's most disadvantaged residents will benefit the entire District. In fact, some estimate that every \$1 of public funds invested in legal services generates \$4 in benefits.

D. The DC Access to Justice Commission and This Report

In recognition of the large number of unmet civil legal needs of low- and moderate-income residents, the DC Court of Appeals created the DC Access to Justice Commission (Commission) in 2005. The Commission was charged with:

Assuring high quality access for [these] residents and others in the District, who suffer disparate access barriers to the civil justice system and with raising the profile in our community of the need for equal access to justice.

This report assists the Commission in these efforts by helping it to prioritize future initiatives. It also seeks to educate all District residents about the civil legal needs confronting low-income individuals and the legal services network's efforts to meet those needs.² Only by understanding the challenges that face so many of our neighbors can we come together as a community to address them.

E. The Methodology

Our data comes from several sources. These include:

- Written surveys distributed to the District's legal services community in 2006 (asking for fiscal year 2005 data).
- A short data collection form that legal services providers³ and law school clinics were asked to fill out for each person who sought legal assistance from October to November 2006.
- Interviews of 28 community-based organizations (that are not legal services providers) and government agencies.
- Court statistics.
- Listening sessions with various stakeholders.
- Social science reports concerning the District.

A legal services lawyer helped a District family understand and assert their rights in order to remedy a horrible housing situation. The family lives in an apartment complex in a low-income neighborhood. A tenant downstairs from them experienced major plumbing problems. The sewage backup caused sewage to stream into the apartment through the sink, toilet and bath tub. The tenant moved out, but the problem was never fixed. The other tenants, including this family, complained to the landlord about sewage water flooding the now vacant apartment, seeping onto the common stairwell and causing a horrible odor to spread throughout the complex. The family's back bathroom, which was directly above the flooded apartment, contained a smell so foul that the family had stopped using it entirely. No clean-up, maintenance or repair work was done for nearly two months.

The legal services lawyer educated the family about their rights under DC housing law. She also helped them write a letter to the landlord that demonstrated their knowledge of their rights and demanded that immediate action be taken. Within 24 hours of delivering the letter to the landlord, a maintenance crew was sent to the apartment complex to fix the deficient plumbing, clean out all the sewage and eliminate the offensive smells that had plagued the family and their neighbors for weeks.

This report gives an overview of the civil legal issues confronting low-income residents and the challenges that the legal services network confronts in attempting to meet them. It does not purport to provide an exhaustive discussion of any particular subject area or the role of any one part of the network in meeting unmet legal needs. It also does not focus on the legal needs of moderate-income residents or attempt to assess the quality of legal services delivered. Nor does it go into matters not currently addressed by any provider. The report only touches in passing on the barriers low-income residents—with or without counsel—face in navigating the courts, government agencies and the Council of the District of Columbia (hereinafter the Council). All of these issues are important and merit future study.

F. Our Findings

1. SUBSTANTIAL OBSTACLES TO OVERCOME

Low-income residents face tremendous obstacles in the civil legal system. The problem is not merely the inability to afford an attorney. The barriers are also educational, physical and emotional. As one representative of a community-based organization observed:

Poverty isn't just poverty of finances. It is poverty of a broad set of issues and concerns. It is a poverty of access, education, resources, and streams of knowledge that allows you to participate fully in society. This poverty includes [knowledge about] legal rights.

Among other things, many low-income residents:

- Are unaware of their legal rights,
- Lack knowledge regarding the availability of legal services,
- Have difficulty getting to a lawyer because many residents are geographically isolated from lawyers and the courts,
- Lack trust in the legal system, and
- May have become used to accepting adversity and unfairness. Believing that change can occur is the first step in advocating for it; for many residents, this first step may be the hardest.

Moreover, many of the District's poorest residents also have physical or cognitive disabilities, do not speak English fluently, are elderly, have poor literacy skills, are in jail or prison or have criminal records. For these individuals, the barriers to civil legal justice are heightened substantially. So, too, are the challenges that providers must confront in meeting their needs. For instance, written self-help materials are of no use to those who cannot read them, and free legal as-

sistance is of little use to those who cannot go to a provider's office or understand the language in which the services are delivered. Since segments of the District's low-income community are not only diverse but live with particular hardships, it is important for the legal services community to tailor its outreach, education and service delivery methods to meet these residents' unique needs.

Community organizations have many ideas about how to overcome some of these obstacles. For example:

- Because people with limited resources may have limited time and inconsistent schedules, information should be distributed at places that already intersect with their daily lives, such as churches or schools.
- Walk-in services are preferable to services that are only by appointment.
- Low-income residents often lack substantial formal education and may be low literate or illiterate. Accordingly, in-person communication is preferable and written materials must be easily comprehensible.
- Many low-income residents lack access to computers and, therefore, the Internet may not be the most effective means of distributing information to them.
- Low-income residents may be distrustful of lawyers and the legal system. Legal services providers should develop relationships with churches and other trusted community organizations that serve these residents.
- Different cultures and communities require different forms of communication. For example, oral communication rather than written materials may be more effective in reaching out to certain ethnic communities.

2. THE EXTENSIVE, VARIED AND COMPLEX CIVIL LEGAL NEEDS CONFRONTING THE LOW-INCOME COMMUNITY

The civil legal needs confronting members of the low-income community are varied and complex. They are often intertwined with physical or emotional well-being. In addition, low-income residents may have more civil legal needs than their wealthier counterparts due, in part, to their interaction with government agencies and their vulnerability to scams and unfair practices (such as predatory lending, foreclosure rescue scams and unfair employment practices).

Our report looks at nine different subject areas: consumer, education, employment, estate planning/wills/probate,⁴ family, public benefits, health/disability, housing and immigration. Survey and data collection participants also reported on other issues that did not fall neatly into these categories, such as prisoners' rights issues, personal injury and police misconduct/disputes.

Within each of these subject areas, the low-income community needs legal services. The following summary illustrates the types of issues, the kinds of legal services that will help address the need and other findings of interest for each subject area. It does not purport to be a complete explanation of our findings, which are in Sections III-VIII of the full report.

In reviewing the summary, please note that it lists the number of full-time equivalent (FTE) legal services attorneys in each subject area in 2005. In fiscal years 2007 and 2008, the DC government appropriated \$3.2 million for civil legal services that resulted in the hiring of 31 additional FTE legal services lawyers. Seven of these FTE lawyers work in Landlord/Tenant Court, as is noted in the summary. The rest are not included in the summary's figures, because these lawyers are not necessarily limited to one practice area.

Summary of Subject Areas

SUBJECT AREA	REPRESENTATIVE ISSUES/CASE TYPES	EXAMPLES OF NECESSARY SERVICES
CONSUMER	<ul style="list-style-type: none"> • Predatory lending • Deceptive business practices • Bankruptcy/debt collection 	<ul style="list-style-type: none"> • Assisting with bankruptcy petitions • Reviewing contracts before execution • Advocating for new consumer protection legislation
EDUCATION	<ul style="list-style-type: none"> • Special education • Disciplinary proceedings • School transfers/access to education 	<ul style="list-style-type: none"> • Advocating for reform of the education system • Representing individuals in special education proceedings
EMPLOYMENT	<ul style="list-style-type: none"> • Wage and hour issues • Employment discrimination • Wrongful termination • Unfair employment practices 	<ul style="list-style-type: none"> • Representing discharged workers in court and administrative proceedings • Advocating for wage and benefits legislation • Educating the community regarding unfair employment practices
ESTATE PLANNING/ WILLS/PROBATE	<ul style="list-style-type: none"> • Wills • Guardianships • Conservatorships 	<ul style="list-style-type: none"> • Drafting wills and advanced medical directives • Providing advice or representation to participants in probate proceedings

Summary of Subject Areas (continued)

SUBJECT AREA	REPRESENTATIVE ISSUES/CASE TYPES	EXAMPLES OF NECESSARY SERVICES
FAMILY	<ul style="list-style-type: none"> • Domestic violence • Child custody/visitation • Divorce • Child welfare 	<ul style="list-style-type: none"> • Representing victims of domestic violence • Representing children, parents, and foster parents in child welfare proceedings • Preparing petitions for divorce • Advocating for laws to protect domestic violence survivors • Advocating for laws reforming foster care • Seeking reform of court processes to facilitate self-representation
PUBLIC BENEFITS	<ul style="list-style-type: none"> • Temporary Assistance to Needy Families (TANF) • Social Security • Food stamps 	<ul style="list-style-type: none"> • Assisting individuals to navigate agency procedures • Applying for or appealing the denial of benefits • Educating the community regarding eligibility
HEALTH/DISABILITY	<ul style="list-style-type: none"> • Health insurance • Americans with Disabilities Act/accommodation issues • Medical debt 	<ul style="list-style-type: none"> • Intervening with an insurer to resolve a coverage issue • Seeking regulatory changes to broaden health coverage • Working with community groups and service providers to inform persons in poverty about health programs
HOUSING	<ul style="list-style-type: none"> • Affordable housing • Eviction proceedings • Other landlord/tenant disputes • Housing discrimination 	<ul style="list-style-type: none"> • Representing tenants facing eviction or living in hazardous conditions • Assisting tenant associations with incorporating and organizing • Preserving affordable housing in the District • Changing procedures in Landlord/Tenant Court
IMMIGRATION	<ul style="list-style-type: none"> • Deportation/removal proceedings • Status/classification issues 	<ul style="list-style-type: none"> • Representing individuals in deportation cases • Outreach and education regarding changes in immigration laws

Additional Findings Regarding Subject Areas

Consumer

- With limited resources and sometimes bad credit ratings, people living in poverty are vulnerable to exploitation by unscrupulous lenders, merchants and scam artists.
- Subprime loan providers target customers with few financing options. As a result, they may be predatory and carry excessive and unjustifiable fees, penalties or loan terms, involve inappropriate marketing strategies and fail to disclose loan terms fully. In 2003, home buyers in Wards 5, 7 and 8 were almost ten times more likely to receive a home purchase loan from a subprime lender than those in Ward 3.
- There were approximately five full time equivalent (FTE) paid legal services attorneys who focused on consumer matters in 2005.
- Consumer exploitation or other forms of economic injustice are a major problem for District residents but a nebulous one, making it unlikely that victims will recognize the need for legal assistance. These problems usually cannot be remedied by traditional forms of one-on-one representation. Many are systemic problems that require a comprehensive strategy and the resources to carry it out.
- Community-based organizations reported that those who are low-income and the elderly have the greatest need for assistance in the consumer area.
- Financial services cases can be difficult to staff with pro bono lawyers because of conflicts issues.

Education

- In 2006-2007, the high school graduation rate for students in the District was only 58%. The city would save almost \$20 million in health care costs over the lifetimes of each class of dropouts had they earned diplomas.
- Over 50% of teenage students attend schools that meet the District's definition of "persistently dangerous" due to the number of violent crimes on campus.
- In 2005, there were approximately five FTE paid legal services attorneys devoted to education matters.
- Almost all of the providers who received requests for education-related assistance identified special education as one of its two most requested. More than one provider also identified disciplinary proceedings and school transfers/access to education.
- The school district's special education system is of particular concern to legal services providers. In 2004-2005, nearly 19% of students were identified as disabled. This figure is up from 11.4% in 1999. The system is ill-equipped to handle the large number of children who are disabled, and all children suffer as a result.
- Providers have observed that the statutory cap on the attorneys' fees payable in special education cases has greatly reduced the incentive for private attorneys to take these cases.

Employment

- The District's unemployment insurance (UI) program replaces less than 25% of average earnings, which places the District last among the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands.
- In 2005, there were approximately six FTE paid legal services attorneys who focused on employment matters.
- Data collected by the Office of Administrative Hearings (OAH) over two representative months demonstrates that only about 10% of all parties in UI appeals are represented by counsel. About the same number of employees as employers were represented. In 2005, more than 50% of appeals taken to the DC Court of Appeals from agency matters were by *pro se* litigants, (i.e., people who appear in court without a lawyer) and the overwhelming majority of those were UI matters.
- Community-based organizations emphasized a particular need for assistance with employment issues among the immigrant and ex-offender communities.
- The potential recovery for low-income employees may not be large enough for a plaintiff's lawyer to agree to bring an employment discrimination claim on a contingency fee basis.

Estate Planning/Wills/Probate

- Persons in non-traditional household arrangements have a special need for wills and other estate planning.

Additional Findings Regarding Subject Areas (continued)

- Approximately three FTE paid legal services attorneys were devoted to estate planning work in 2005, fewer than any other subject area.
- In 2005, nearly half of the formal probate matters before the DC Superior Court's Probate Division involved *pro se* plaintiffs. Almost all of the small estate matters (*i.e.*, those involving assets of \$40,000 or less) and the majority of the trust matters before the Probate Division involved *pro se* plaintiffs. Similarly, in 2005, 40% of appeals to the DC Court of Appeals from the Probate Division involved a *pro se* litigant.
- Estate planning ranked fourth (behind housing, family, employment and tied with consumer) in terms of the subject areas in which providers perceive the most under-addressed legal need.
- There are both unique opportunities and challenges when it comes to utilizing pro bono assistance in this area. Because matters can be discrete, estate planning work may provide opportunities for transactional attorneys or smaller firms to assist low-income residents. However, probate matters can be particularly difficult to place with pro bono attorneys because it is difficult to tell at the outset if the matter will require tax, real estate or other expertise. Most probate lawyers are solo practitioners or with smaller firms and lack the resources to do extended pro bono work.
- The District's aging population makes it likely that the low-income community's need for estate planning assistance will continue to increase.

Family

- The Center for the Study of Social Policy reports that only 45% of child abuse and neglect investigations are completed within the 30-day deadline.
- Since the overwhelming majority of poor and low-income children come from single parent homes, there is a great need for child support enforcement services in the District, including establishing paternity and obtaining and enforcing child support orders.
- Approximately 21 FTE paid legal services attorneys focused on family law in 2005.
- In the Family Court, 38% of plaintiffs were *pro se* in adoption cases and 77% of plaintiffs were *pro se* in divorce/custody/miscellaneous cases. On the respondents' side, nearly 38% in 2005 were *pro se* in divorce/custody/miscellaneous cases, and over 98% of respondents were unrepresented in paternity and child support cases.
- In 2005, about 98% of both petitioners and respondents in the Domestic Violence Unit were *pro se*.
- More providers ranked family law among the top four areas in which requests were received in 2005 than any other subject area.
- Of the five "generalist" organizations that provide services in a range of areas, all included family law in the top three subject areas in which they received the most requests.
- There is a need for assistance with multi-jurisdictional custody and support issues because while many

people move to or from the District, most providers focus only on disputes arising in the District.

- It is difficult to find legal services attorneys, particularly bilingual attorneys, to take time consuming divorce cases.

Public Benefits

- While 25% of the District's families live below the federal poverty level, only 15.7% received TANF benefits in 2005. The average TANF payment for a family of three in the District is \$407 per month (compared to \$490 in Maryland and \$389 in Virginia), and is lower than half the states.
- In 2005, approximately 12 FTE paid legal services attorneys were devoted to public benefits matters.
- In 2006, 871 public benefits appeals were filed with OAH. OAH estimates that over 95% of the parties proceeded unrepresented with their TANF, food stamps, Medicaid and interim disability assistance cases.
- The public benefits problems confronting low-income residents are often exacerbated by the government agencies charged with delivering the benefits. The need for advocacy work with respect to these agencies is extensive and critical.
- Public benefits rules and regulations are among the most technical and complex in the poverty law area. These regulations challenge even experienced advocates.

Health/Disability

- There is a strong correlation between poverty and disability. About 33% of District residents who are disabled live below the poverty line, compared to about 20% of the total population.
- 10,000 residents under the age of 18 had no medical insurance coverage in 2006. Numerous persons that qualify for public coverage are not currently enrolled.
- The District's AIDS rate is the worst of any major city in the country. In 2006, there were 12,428 people reported as living with HIV and AIDS in the District.
- In 2005, approximately 15 FTE paid legal services attorneys were devoted to health/disability matters.
- Legal services providers believe that there will be an increase in the legal needs related to mental health issues.

Housing

- Over 37% of District residents live in housing that is deemed unaffordable, meaning that these residents spend over 30% of their income on housing costs. Over 18% of District residents are experiencing severe housing burden, meaning they spend more than 50% of their income on housing costs.
- Housing issues confronting the low-income community are extensive and vary depending on whether the resident is a homeowner, renter, recipient of public housing assistance or homeless.


- In 2006, 2,114 families applied for emergency shelter at the District's central intake facility, including an estimated 3,332 children. However, emergency shelter apartments or alternative services served only 442 of those families. As of 2006, the estimated wait time for a family seeking emergency shelter was at least six months.
- In 2005, about 20 FTE paid legal services attorneys were devoted to housing matters. The public funding beginning in fiscal year 2007 added seven more attorneys stationed in Landlord/Tenant Court to provide same day representation to *pro se* litigents.
- More than 46,000 cases were filed in Landlord/Tenant Court in 2006. Only about 3% of defendants who have to appear in Landlord/Tenant Court are represented by counsel.
- Of the cases filed in Landlord/Tenant Court, approximately 75% are closed due to dismissals or default judgments. Of the remaining 25%, approximately two-thirds are closed by confessions of judgment or consent agreements, notwithstanding claims or defenses that may be applicable. In contrast, tenants who are represented by counsel rarely enter consent judgments.
- The District has a number of pro-tenant laws, but many residents are unaware of these laws.

Immigration

- From 1980 to 2000, the immigrant population in the District rose from 40,559 to 73,561—an 81.4% increase. While the total District population declined by 6% in the

1990s, the immigrant population grew by 25%.

- The District's immigrants come from a variety of countries. Such a melting pot of customs, language, religion and social outlooks creates a complex and diversified set of issues and needs.
- Of the approximately 11 FTE paid legal services attorneys who were devoted to immigration matters in 2005, all worked with smaller providers.
- District providers face pressure to serve a large number of immigrants residing outside of DC because local initiatives in neighboring suburbs have targeted immigrants.
- Residents seeking assistance with immigration issues can face unique obstacles such as substantial filing and other fees charged by federal agencies (which, unlike courts, will not waive fees for indigent applicants) and language barriers.
- Public benefits or other civil legal problems (and their resolutions) can have collateral consequences on immigration status.
- The close linkage between one's immigration status and other civil legal issues makes it increasingly challenging for legal services providers to address and anticipate all the collateral issues that could arise when serving immigrants. As a result, the need for understanding the intricacies of immigration law extends far beyond just those providers that focus on getting clients permanent residence, citizenship, or asylum.



H. Carl Moultrie I Courthouse of the District of Columbia FAMILY COURT

While it is extremely difficult to quantify the exact magnitude of need in each of these areas, some information is available. The DC Courts provided statistics for 2005 concerning the number of *pro se* litigants for certain cases. These statistics, which are included in the preceding summary, demonstrate that the need is substantial. To recap:

- Almost 45 percent of formal probate matters, 98 percent of the small estate matters and 60 percent of the trust matters before the Probate Division of DC Superior Court involved *pro se* plaintiffs.
- 98 percent of both petitioners and respondents in the Domestic Violence Unit of the DC Superior Court proceeded *pro se*.
- 77 percent of plaintiffs in divorce/custody/miscellaneous cases in Family Court were *pro se*.
- More than 98 percent of respondents in paternity and child support cases were *pro se*.
- About 97 percent of defendants who had to appear in Landlord/Tenant Court were *pro se*.

Some subject areas also had more activity and articulated demand for services than others. For instance, according to our data, family, housing and public benefits were the areas in which the largest numbers of requests for legal assistance were received. Our survey of providers indicated that:

- More providers turned away requests for assistance in family, housing and consumer than any other area.
- Providers perceived the most under-addressed legal

needs to fall within the areas of housing, family and employment.

- Housing, family and immigration were the three subject areas for which providers most frequently anticipated an increase in the need for civil legal services.

Community-based organizations most frequently mentioned the following subject areas as those with the greatest level of need: housing and landlord/tenant, immigration, employment, public benefits, consumer and family law. As demonstrated throughout this report, however, the unmet need for legal assistance in each of the nine areas is significant. Our survey confirmed that there is no area in which all of the need is being met. Further, in almost every subject area, at least one provider anticipated that the level of need would increase.

For several reasons, this report does not rank subject areas in terms of importance or urgency. First, the number of requests for assistance in each area does not tell the entire story because, among other things:

- Residents are more likely to recognize some issues as a legal problem than others (and, therefore, are more likely to seek out assistance for that issue)—*e.g.*, an eviction proceeding may be more recognizable as a problem with which lawyers can assist than a predatory lending scheme;
- Many people do not know about the availability of civil legal services and so do not seek them;
- Residents may stop asking for assistance if they already know that few legal services are available; and

The providers range from one lawyer to more than 30 and from generalists offering a diversity of legal services programs to those focusing on particular subject areas. They have a wealth of expertise, use varying practice models and provide services ranging from distributing self-help materials to brief advice to full representation.

- People generally seek assistance for their individual problems, and thus requests for assistance typically do not take into account the need for systemic advocacy and broad-based legal representation.

Second, the areas that are most pressing may vary depending on the subset of the low-income population—*e.g.*, immigrants, the elderly or ex-offenders may have needs that are different from those of the population as a whole. Finally, it is impossible to rank these subject areas in terms of relative importance simply because the stakes in so many of these matters are so very high. The matters may differ, but bad outcomes in any one of them could prove equally disastrous.

3. THE CAPACITY OF LEGAL SERVICES PROVIDERS

The District has a variety of resources to draw from in serving low-income residents. The city is home to a legal services community that includes more than 30 legal services providers, government agencies and law school clinics. The providers range from one lawyer to more than 30 and from generalists offering a diversity of legal services programs to those focusing on particular subject areas. They have a wealth of expertise, use varying practice models and provide services ranging from distributing self-help materials to brief advice to full representation.

In addition, members of the District's judiciary have continually demonstrated their commitment to improving access to justice for all District residents. The District is also home to a private bar with an unsurpassed commitment to pro bono work. The private bar supports pro bono activities and the District's Interest on Lawyers Trust Accounts pro-

gram (IOLTA).⁵ The program has seen a significant increase in fiscal years 2006 and 2007.

Furthermore, in fiscal year 2007, for the first time the Council voted to provide \$3.2 million in funding to support civil legal services. Mayor Adrian M. Fenty and the Council continued this level of support for civil legal services in fiscal year 2008.

All of these factors have given the District a solid base for addressing residents' unmet legal needs. That is the good news. The bad news is that the good news is not nearly good enough.

Even in light of these resources, the needs of those who cannot afford a lawyer substantially outweigh the available services. Our survey indicated that one of the top three reasons providers turned away requests in 2005 was that they had inadequate resources to handle the matter. Resource constraints also likely played a role in the other two reasons providers gave for turning away requests—the matter fell outside of the provider's mission or expertise, or the person making the request fell outside the provider's income or eligibility guidelines. Providers are limited in the services they can provide and the areas they can serve due to a lack of funds for staff and training. Similarly, providers often use income eligibility guidelines as a way of rationing scarce resources.

The legal services providers reported a combined budget in 2005 of approximately \$15 million for the provision of legal services to District residents. (This figure excludes funds dedicated to the civil cases that bear a statutory right to counsel.) The budgets of individual providers ranged from \$60,000 to \$2 million, with the plurality falling within

A legal services lawyer represented Ms. Parker*, a woman who fled with her children from a violent relationship. Because the father of her children was more sophisticated and had more resources, he was able to manipulate the system. Ms. Parker was charged with parental kidnapping and her children were taken away. After a bitter and difficult legal battle, the DC Superior Court found that Ms. Parker was a victim of abuse, entered a protective order for her, and began the process of reuniting her with her children. If Ms. Parker had not been able to get a legal services lawyer, it is possible that she would not have been able to get custody of her children.

* The names of the people in this report have been changed to protect client confidentiality.

the \$100,000 to \$500,000 range. Notably, some of the legal services providers' funding comes with certain restrictions, such as the populations that can be served (*e.g.*, only the elderly, victims of domestic violence or people with disabilities) or the subject area that must be covered (*e.g.*, housing). Such restrictions limit providers' ability to shift areas of service and case priorities to meet emerging needs.

Even with the recent addition of \$3.2 million in government funding (which was not available in 2005), the providers' collective budget does not come close to what is spent on other aspects of our justice system or what is needed to serve the District's low-income community. Legal services providers, along with the pro bono services of District lawyers, are the primary way for low-income District residents to have significant participation in the justice system. The lack of funding for the providers limits their ability to serve more clients directly and to facilitate the work of more pro bono attorneys. The result is a lack of meaningful access to our judicial system for thousands of city residents.

Our survey indicated that there were approximately 140 FTE legal services attorneys working to meet the civil legal needs of the District's low-income community in 2005 (excluding those working on the limited numbers of cases in which there is a statutory right to counsel). An additional 31 attorneys have been employed as a result of the DC government's recent funding. While the legal services network only had about 12 FTE positions located east of the Anacostia River in 2005, the public funding has more than doubled this number. Even with these additional attorneys, staffing is far from adequate to meet the need.

Most legal services providers are relatively small. In 2005, half had three or fewer lawyers working for them. Legal services attorneys working in the family, housing and health/disability areas constituted over 50 percent of all the legal services attorneys in 2005. There were only about five FTE legal services attorneys serving the District's low-income community in areas such as consumer and education. The recent infusion of public funding added seven housing lawyers, with the rest of the 31 lawyers spread out among the other subject areas.

Given their limited resources, legal services providers have accomplished remarkable things and served a significant number of District residents. Our survey indicated that they collectively provided full representation (representation through the resolution of the matter) to nearly 3,600 people in 2005. That figure does not include the number of people represented by pro bono counsel. More than 23,000 individuals received limited advice and several thousand received a referral to another legal services provider. These services are important, but our survey demonstrates that providers want to and need to do much more.

4. CHALLENGES FACING THE LEGAL SERVICES NETWORK—A CALL TO ACTION

Our report identifies a number of challenges the legal services network must address in order to serve more low-income residents more effectively. Resources are at the root of many of these challenges, but additional funding is not the complete solution. Many of these challenges are longstanding and not easily solved. That is not an excuse to let the problems persist, but rather a call to action to all involved—legal services providers, government agencies, courts, bar members, law schools, foundations and all others who are part of our civil justice system—to come together and tackle these challenges. We identified ten courses of action which would greatly improve the provision of legal services to the District's low-income residents.



- a. Increase Staff of Legal Services Providers.** Each legal services provider lacks the staff necessary to assist all the people who walk in the door; as a result, providers are forced to ration assistance. For instance, our data indicated that a significant number of providers only had capacity to offer low-income residents brief advice or *pro se* assistance to many seeking services. The relatively small number of legal services lawyers cuts across subject matter areas. It is difficult to fathom, for instance, that there are only about five FTE legal services lawyers working on consumer-related issues in the District, given the widespread nature and complexity of these problems. On the other end of the scale, those areas with the most lawyers—housing and family law—still do not have nearly enough attorneys to meet the need. Low staffing also inhibits the ability of legal services providers to leverage the pro bono resources available in the private bar because there are fewer attorneys available to train, mentor and support pro bono attorneys and to package and refer matters for them to handle. It is a simple equation: more legal services lawyers will equal more low-income people served
- b. Make the Legal Services Delivery System Even More Accessible to the Low-Income Community.** The legal services network has a number of different legal services providers with widely varying characteristics. While there are benefits to such diversity, the fragmented nature of the system can give rise to inefficiencies and can be confusing to residents who are seeking to find the right provider for a particular case. Consequently, the network should find ways to get clients to the right organization quickly. In addition, the combination of too few attorneys and too many requests for assistance results in a system that generally focuses on a high volume of brief assistance as opposed to extended representation. While not everybody needs (or wants) full representation, the network should respond according to the clients' needs and ensure that the structure of the system does not affect the type of assistance the client receives.
- c. Expand Systemic Advocacy.** The combination of immediate client needs and too few resources precludes most providers from devoting substantial time to strategic systemic advocacy, despite the desire to do so and the recognition that such efforts could have a broad, lasting impact. Systemic advocacy projects hold the promise of assisting with issues underlying the needs of low-income residents and should be increased. This work does not result in changes overnight, and measuring success is more difficult in comparison to representing an individual client. However, investing in this capacity, if done thoughtfully, should yield results that will affect a broader cross-section of the low-income community.
- d. Expand Pro Bono While Ensuring Effective and Efficient Use.** The pro bono support that legal services providers receive from the private bar significantly expands their capabilities to serve low-income residents. However, even with all of the pro bono work that goes on in the District, there is still an urgent need for more. The private bar has considerable untapped sources that could provide significant pro bono support. It is incumbent on the legal services providers and the private bar to maximize pro bono and ensure its effective and efficient application. To meet this challenge, pro bono attorneys need additional training and support; law firms should develop more in-house expertise in poverty law areas; the legal services network should examine the most appropriate ways to use pro bono lawyers to meet different

poverty law needs; and the private bar should speak out forcefully when pro bono efforts appear limited in a particular area.

- e. **Increase Outreach and Community Education to the Low-Income Community.** Although it is generally acknowledged that low-income residents lack education about their legal rights and the availability of legal services, providers have generally been reluctant until now to devote too much of their limited resources to outreach and community education. Among other things, providers are concerned that extensive outreach will essentially be false advertising, since they do not even have the capacity to help all the people who seek assistance now. The addition of legal services attorneys due to the infusion of public funding should result in greater outreach. Moreover, by educating members of the low-income community about their rights and encouraging them to vindicate those rights, providers may learn of matters earlier in the process so issues can be addressed before they turn into full-fledged cases.
- f. **Expand Partnerships and Outreach to Community-Based Organizations.** Community-based organizations we interviewed could often identify only a handful of providers to whom they had referred clients; they generally lacked knowledge about the majority of legal services providers. These community-based organizations are on the front lines serving the low-income community and need to be aware of the range of legal services available to their constituents. Collaborations between and among legal and social services providers (*e.g.*, between medical clinics and lawyers) are on the rise, which should help address the lack of knowledge problem to some degree. Further collaboration between legal and social services providers, even if no formal partnership is formed, is needed to increase the awareness of and to streamline the legal services process for District residents. While establishing these partnerships is time consuming and can be challenging, the resulting benefits to clients should exceed these short-term costs. Simply informing community-based organizations about available services should help the legal services network reach potential clients in need.
- g. **Strengthen the Legal Services Network's Capacity to Serve Populations that are Difficult to Reach.** Many of the District's poorest residents are difficult to reach because they have physical or cognitive disabilities, they are limited English proficient (LEP)⁶ or have poor literacy skills, or they have limited mobility because they are elderly, infirm or incarcerated. For these individuals, the barriers to civil justice are heightened substantially. Many legal services providers have developed expertise in serving one or more of these groups. Their collective knowledge needs to be harnessed so they can serve as a resource for the rest of the legal services network. Properly serving each of these difficult-to-reach populations will be a challenge that will likely require considerable resources deployed in creative ways. Reaching out to these populations, however, is essential to ensure that the most vulnerable members of our community have meaningful access to our civil justice system.
- h. **Enhance Training.** Our survey showed that resource constraints prohibit legal services providers from providing more training to their lawyers and staff in a host of areas. Such training could substantially enhance the collective skills and efficiency of the legal services attorneys and staff. In particular, providing appropriate training to managers should help each provider stabilize and grow, thereby strengthening the entire legal services network.
- i. **Keep Up with Technological Change.** Legal services providers have long lacked the tools of technology that lawyers in the private sector take for granted. Although the situation has been helped by the recent increase in funding, the legal services network still needs improved technology and sustained support to keep up with evolving technological advances.
- j. **Improve Data Collection.** In collecting information for this report, we noted that data collection practices vary among legal services providers and are often limited. The lack of comprehensive, uniform record-keeping makes a complete assessment of the system challenging. Fortunately, the DC Bar Foundation and the providers have spent significant time in the last year addressing this issue.

The DC Courts' vision of being an institution that is "Open to all, trusted by all, with justice for all" will never be fully realized as long as so many of our low- and moderate-income residents lack adequate civil legal representation to help protect their basic rights and liberties.

G. Conclusion

Since the Commission's formation, much has been done to address the unmet legal needs of the low-income community. For the first time, the District has provided public funding for civil legal services. Collaboration by and among legal services providers is also on the rise. Providers have spent considerable time discussing how to improve legal services delivery and have reached out to community-based organizations to assist them in reaching low-income residents. The pro bono culture among private practitioners in the District appears to be as strong as ever.

One thing is clear, however. Much more must be done. With each step forward, we have discovered new information concerning the magnitude and complexity of the need. The changing demographics of the city have presented the legal services network with additional challenges, and there is universal agreement that the legal needs of the low-income community will only increase over time. Funding for civil legal services must be substantially increased, and yet, increased funding is not the complete solution. The complete solution will require the entire legal services network and the community at large to collaborate in addressing the unmet needs and challenges we have identified. The ability of thousands of the poorest District residents to have equal access to justice depends on it. As stated by Chief Judge Eric T. Washington of the DC Court of Appeals:

The DC Courts' vision of being an institution that is "Open to all, trusted by all, with justice for all" will never be fully realized as long as so many of our low- and moderate-income residents lack adequate civil legal representation to help protect their basic rights and liberties.⁷

The stakes are high, but so too is the commitment of the legal services network to effectuate lasting change in the District. It can be done. It must be done.

II Introduction



Approximately one-third of District residents and half of the District's children are low-income.⁸ These individuals struggle every day to put food on the table and meet other basic needs. A circumstance that might be a temporary inconvenience for some—a lost wallet, a tooth infection, an employment dispute—could have a significant impact on these residents because it diverts the resources they need for daily subsistence.

What, then, do these individuals do when faced with a legal problem? If it is a criminal problem where jail time is a possibility, they are entitled to a court-appointed attorney free of charge. For most civil cases,⁹ however, no such right exists, and low-income residents must often navigate the legal system alone because they cannot afford a lawyer. Given the complexity of the legal system and the high stakes involved, this is unacceptable.

A. Legal Issues Confronting the Low-Income Community—Too Important to Leave to Chance

The civil legal needs of low-income individuals often involve issues critical to personal well-being, if not survival. These issues can include responding to an eviction notice, battling employment discrimination, appealing the denial of public benefits and adjusting their immigration status. Left unaddressed, these needs can spill over into other areas. For example, for a person living paycheck to paycheck, a wrongful termination or denial of supplemental benefits could result in homelessness.

If people with adequate resources confronted a legal issue with so much on the line, would they choose to forego an attorney and tackle the issue on their own? It is hard to imagine that they would. Studies frequently demonstrate that legal representation can dramatically affect the outcome of a given case.¹⁰ For example, one study in New York City's Housing Court concluded that low-income tenants who were given legal representation had far fewer judgments entered against them and were more likely to benefit from a stipulation requiring certain concessions or improvements from the landlord.¹¹

Representing individuals in court is only a fraction of what lawyers do. Lawyers address problems in a range of other ways. For example, legal services lawyers prepare wills and other estate planning documents so that a person's end-of-life wishes will be respected; incorporate small businesses and provide advice so that businesses comply with the law; represent tenant associations in bids to buy property; and advocate for administrative regulations and legislation that meets the needs of their client community.

B. Creation and Work of the DC Access to Justice Commission

To address the scarcity of civil legal representation for low- and moderate-income District residents, the DC Court of Appeals created the Commission in 2005. The DC Court of Appeals also charged the Commission with facilitating the planning and coordination of civil legal services delivery, as well as working with the District government to propose

and promote policies and practices that reduce barriers in the civil justice system. The Commission has 17 members, including judges, bar leaders, lawyers serving low-income individuals and other community leaders.

The Commission has worked closely with the DC Courts to ensure that procedural requirements, such as electronic filing of legal documents, do not unduly burden low- and moderate-income litigants; collaborated with the DC Superior Court and legal services providers to develop a program to provide legal assistance to *pro se* litigants in Landlord/Tenant Court; spearheaded providers' efforts to enhance coordination of intake and referrals; partnered with the DC Bar to encourage private practitioners to increase their pro bono work¹²; and worked with the DC Bar Foundation to increase the amount of IOLTA funds available to legal services providers. For further information about the Commission, *see* <http://www.dcaccessjustice.org>.

Most significantly, in fiscal year 2007 the Commission secured \$3.2 million in funding from the District government to support civil legal services. This funding led to the hiring of 31 legal services attorneys for underserved areas of the District and in Landlord/Tenant Court. The funds also support a loan repayment program for legal services lawyers and an innovative shared legal interpreter bank to assist LEP residents. The District government continued this funding in fiscal year 2008.

While the District's \$3.2 million appropriation for civil legal services was an important milestone in the Commission's efforts, it is only a first step. Recognizing the magnitude of the work left to be done, in October 2007, the DC Court of Appeals extended the Commission's original three-year term indefinitely.

C. Legal Services Save Money

The DC government's decision to invest in legal services for the city's most disadvantaged residents will benefit the entire District population. Studies have concluded that funds allocated for civil legal services generate measurable economic benefits that can far exceed the costs.¹³ These benefits range from bringing in funds from other sources to avoiding public expenditures.¹⁴ For example:

- By providing low-income persons with legal representation to fight eviction proceedings, the city

may reduce the cost of providing shelter to homeless families.¹⁵

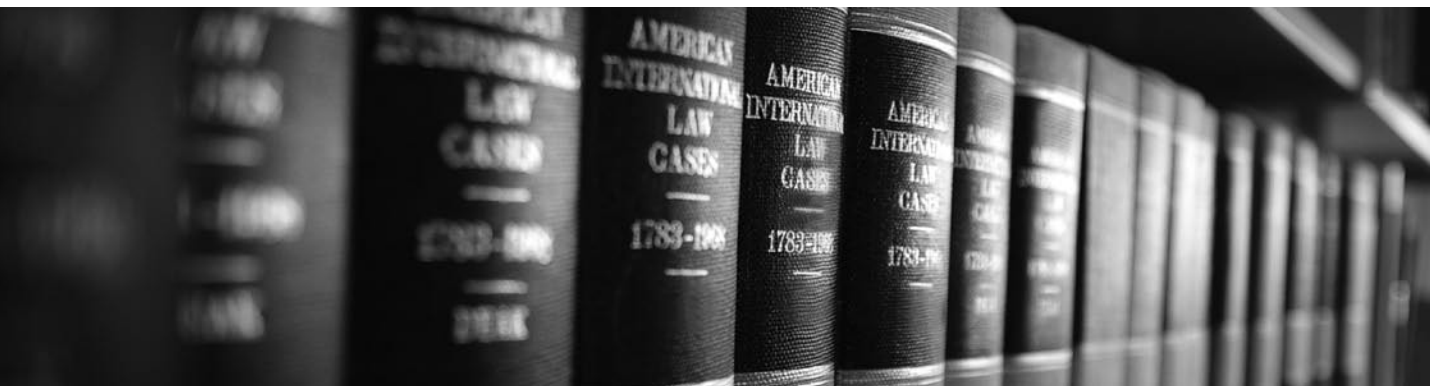
- By expanding court assistance to domestic violence victims, the District may reduce expenditures on medical costs and property damage.¹⁶
- By assisting residents in obtaining federally funded public benefits to which they are entitled (*e.g.*, Supplemental Security Income (SSI) and Supplemental Security Disability Income (SSDI)), the District brings additional money into its economy.¹⁷

Some studies estimate that every \$1 of public funds invested in legal services generates \$4 in benefits.¹⁸

D. Structure of the Report

Our report begins by discussing the research methodology used and areas which are not focused upon in this report but which we believe merit further study. *See* Section III. Section IV discusses the low-income community, including the special problems its members confront and the diversity of needs that exist within it. Section V presents an overview of the legal services network and its capacity to serve those needing legal assistance. Section VI discusses the nine subject areas which comprise the primary civil legal issues confronting the District's low-income residents. Section VII estimates the magnitude of the need for civil legal services. Section VIII describes the challenges confronting the legal services network and the steps that should be taken to address these challenges.

III Methodology and Recommendations for Future Study



The Commission has committed substantial efforts to studying unmet civil legal needs in the District and the capacity of the legal services network to meet those needs. Our report will help us achieve two goals:

1. Prioritize future Commission initiatives, and
2. Educate District residents about low-income residents' civil legal needs and the vital work of the legal services network in an effort to mobilize the community towards collective action.

A. Methodology

Our methodology was informed by a review of other states' legal needs studies (including a national study by the American Bar Association (ABA)) and interviews with persons involved in these studies. The states' methodologies varied substantially, ranging from telephone surveys of low-income households to estimations based on other states' studies.

We concluded that we need not replicate the methodology used in other states. To begin with, virtually every study has concluded that the amount of unmet need is substantial (*i.e.*, in excess of 80 percent).¹⁹ Further, we had the benefit of other data sources, including past legal needs studies conducted in the District. Each such study utilized different methodologies and provides important insights about residents' legal needs and the structure of the legal services network.²⁰ Prior legal needs studies in the District reached some of the same conclusions that we do, particularly as they relate to the overwhelming volume of legal need and the resources of the legal services network. For instance, the 2003 DC Bar Foundation report found that people are turned away in every subject area and providers often lack appropriate technology and do not have the capacity to do more systemic advocacy.²¹ The commonality of some of the findings in these studies over the years demonstrates the chronic nature of these problems.

Building on the significant work done by others, the Commission gathered additional data about the civil legal needs facing people in the District and the capacity of the legal services network to meet these needs. In doing so, we relied primarily on six data sources.

1. WRITTEN SURVEY

In October 2006, the Commission distributed an extensive survey to 32 legal services providers, court resource centers and government agencies that addressed the legal needs for which assistance was sought in 2005 and each organization's capacity to meet those needs, including budget, staffing and other resources.²² In preparing the survey, we sought and received input on the substance and format from Commission members, a number of District legal services providers and members of the Joint Program in Survey Methodology at the University of Maryland. Three providers pre-tested the survey, which was then revised to correct ambiguities and address other technical and substantive issues. We received responses from 28 out of the 32 entities, although not every respondent had data for every question. Where applicable, we have noted the number of entities that responded to a particular question and whether the lack of responses to a particular question may affect our results.

2. DATA COLLECTION

The Commission distributed a data collection form to the same group of providers, court resource centers and government agencies as well as to law school clinics. The data collection form underwent a pre-testing process similar to that of the written survey. Recipients were asked to collect data from all persons who sought legal assistance for a one month period from October 16 to November 16, 2006.²³ 24 organizations responded.²⁴

3. COMMUNITY INTERVIEWS

The Commission interviewed community-based organizations and government agencies serving low- and moderate-income communities throughout the District.²⁵ In selecting organizations to be interviewed, we assembled a group that served a geographically and demographically diverse number of District residents. The organizations interviewed ranged from those serving Hispanic youth to providers of free medical services to nonprofit community development corporations. During the interviews, we posed questions on a number of subjects, including awareness of the availability of free or low-cost legal services, legal needs, access to Internet or computer resources and language access.

4. COURT STATISTICS

The DC Superior Court, the DC Court of Appeals and Office of Administrative Hearings (OAH) provided the Commission with statistics concerning, among other things, the number of *pro se* litigants.



5. LISTENING SESSIONS

The Commission has met regularly with various segments of the community to learn more about their legal needs and how to best meet these needs. In addition, the DC Bar Foundation was charged with allocating the \$3.2 million awarded by the Council to the civil legal services community. To assist it in that process, the DC Bar Foundation and the Commission convened a series of listening sessions with legal services attorneys, law school clinical professors, community groups and executive directors of legal services providers. This report draws from some of the statements and themes that emerged from these sessions.²⁶

6. ADDITIONAL REPORTS AND DATA

The Commission reviewed social science reports and other data concerning poverty in the District and the subject areas in which legal issues frequently arise.

Through these efforts and with the generous support of many, we have gained a significant amount of information about the barriers to justice faced by the District's poorest residents. While no study could document fully all the issues and obstacles, we believe this report is an important step toward a better understanding of the complex problems that are the Commission's mission—and our collective duty—to address.

When reviewing this report, bear in mind that neither the legal needs of the residents nor the resources of the legal services network are static. As laws and the economy change,

so too does the legal needs' landscape. This report is based, in part, on 2005 and 2006 data collected from the legal services community. When more recent developments (such as the significant expansion of the legal services network due to the public funding) may affect the relevance of such data, we have attempted to update it.

B. Areas for Further Study

There were a few areas of legal needs and service delivery where we did not gather information. These areas should be reviewed in the future:

1. THE LEGAL NEEDS OF MODERATE-INCOME INDIVIDUALS

Most of the legal services providers discussed in this report do not accept people with incomes above 250 percent of the poverty level. Ironically, moderate-income individuals' ability to get legal assistance may be even more limited than those living in poverty.

2. THE QUALITY OF LEGAL SERVICES

A further area of study is the quality of legal services delivered and the related issue of retaining staff. It is admittedly difficult to measure quality. Does it depend in large part on the outcome obtained? Or on the client's satisfaction with his or her lawyer? Or on the amount of money spent

to achieve the result? The ABA and the federal Legal Services Corporation (LSC) have published standards and performance criteria for legal services delivery.²⁷ These standards provide helpful models for assessing the quality of civil legal services in the District. Quality of service delivery may also suffer due to staff turnover, since staff members must spend some of their time filling vacant positions and training new hires. Studies and reports have explored the reasons for staff turnover in other parts of the United States, but no such assessment has been made in the District.²⁸

3. FUTURE AREAS OF WORK FOR THE LEGAL SERVICES NETWORK

An assessment should be made of areas that the legal services network does not work in now but that could have a significant positive impact on the low-income community. As described in this report, a great deal of innovative legal services work occurs in the District. However, innovative work being done in other parts of the country shows additional possibilities. In other jurisdictions, legal services providers have pursued such issues as ensuring that environmentally contaminated sites in low-income communities are cleaned, seeking a right to counsel in certain civil cases, advocating that city bus routes equitably serve low-income neighborhoods and eliminating lead paint and asbestos in housing. Some of these issues came up during our interviews of community-based organizations in the District. Further study of the feasibility of these and other initiatives is needed. Second, the potential of pro bono to meet the unmet needs identified in this report should be assessed and recommendations presented to the courts, the providers and the bar.²⁹

4. ACCESSIBILITY OF GOVERNMENTAL INSTITUTIONS

Our focus on legal needs and the capacity of the legal services network to meet those needs captures one aspect of a complex problem. Several other aspects are also worthy of further study. The first is the accessibility of the courts. Accessibility can involve basic physical convenience—the ease or difficulty of traveling to a courthouse, its navigability for people who are elderly or disabled; it can involve understanding the complexity of court rules and procedures; it can involve the way litigants are treated by court staff and judges. A problem in any of these areas affects the litigants' perception (particularly *pro se* litigants) about whether they are being treated fairly. In addition, the work of administrative agencies should be reviewed, examining agencies' transparency in decision making and whether agencies have equitable rules for challenging agency decisions. Finally, we need to assess whether low-income residents can make their voices heard throughout the legislative process before the DC government.

IV The District's Low-Income Community



Poverty is a growing problem in the District. Nearly 20 percent of residents (108,000 people) had incomes below the federal poverty line in 2005.³⁰ See Chart No. 1, “Number of District Residents Below 100 percent and 200 percent of Federal Poverty Level—2005.”

According to a 2007 report by the DC Fiscal Policy Institute, the District's poverty rate is the highest it has been in the last decade; and the likelihood of being poor substantially increases for persons of color.³¹ Almost 27 percent of African American residents and over 18 percent of Hispanic residents lived below the poverty line compared to about 8 percent of their white, non-Hispanic counterparts.³² LEP speakers have a higher poverty rate in the District than non-LEP residents (21.7 percent compared to 19.2 percent according to the 2000 Census).

In 2005, the District had a greater percentage of its population living in poverty than all but one state in the country.³³ It also had the unfortunate distinction of having the highest percentage of children under 18 living below the poverty level (32.6 percent)³⁴ and the second highest percentage of people 65 years and older living below the poverty line (15.2 percent).³⁵

These numbers understate the problem because the federal poverty line is not an accurate indicator of economic need.³⁶ Under the 2006 poverty threshold, a family of four living in the District and earning approximately \$1,750 a month before taxes would be above the poverty line.³⁷ Anyone with recent experience in the DC housing market knows this figure does not come close to reflecting what such a family would need for basic subsistence. One 2005 study estimated that a family consisting of two adults, an infant and a preschooler needed to earn \$60,339 to cover costs for necessities in the District without public or private assistance.³⁸

Many agree that 200 percent of the federal poverty level is a more appropriate benchmark.³⁹ 33.9 percent of the District's population (193,000) and more than half of its children under the age of 18 (59,000) fall under 200 percent of the poverty line.⁴⁰ The gap between the LEP and non-LEP speakers also becomes greater when looking at those who are at 200 percent of the poverty line. According to

the 2000 Census, 46.5 percent of LEP residents live under 200 percent of the poverty level, compared to 34 percent of non-LEP residents.⁴¹

A. The Increased Isolation of the District's Low-Income Community

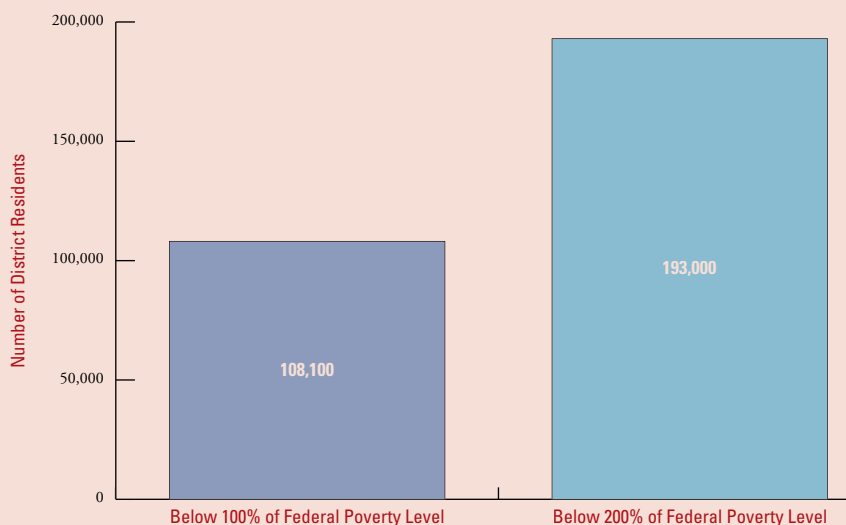
In 2006, income inequality in the District (*i.e.*, the gap between high-income and low-income households) was wider than in almost any other major city.⁴² Over the last two decades, the average income of the poorest fifth of families increased by only 3 percent (\$12,300 to \$12,700) while the average income of the richest fifth increased by 81 percent (\$87,300 to \$157,700).⁴³ This disparity has been attributed to a number of factors, including wage inequality and a significant decline in the value of public benefits received by District residents.⁴⁴

Income inequality exacerbates the shortage of affordable housing and the geographic isolation of low-income families.⁴⁵ As rent and home prices increase with rising incomes, the availability of affordable housing opportunities decreases for those whose incomes are not rising at the same rate.⁴⁶ It becomes increasingly difficult for low-income buyers to compete in the housing market, resulting in greater geographic separation of lower-income and other families.⁴⁷

The District's poor are concentrated in several wards. *See* Chart No. 2 "Poverty Rate by Ward—2000."

Chart No. 1

NUMBER OF DISTRICT RESIDENTS BELOW 100 PERCENT AND 200 PERCENT OF FEDERAL POVERTY LEVEL—2005*

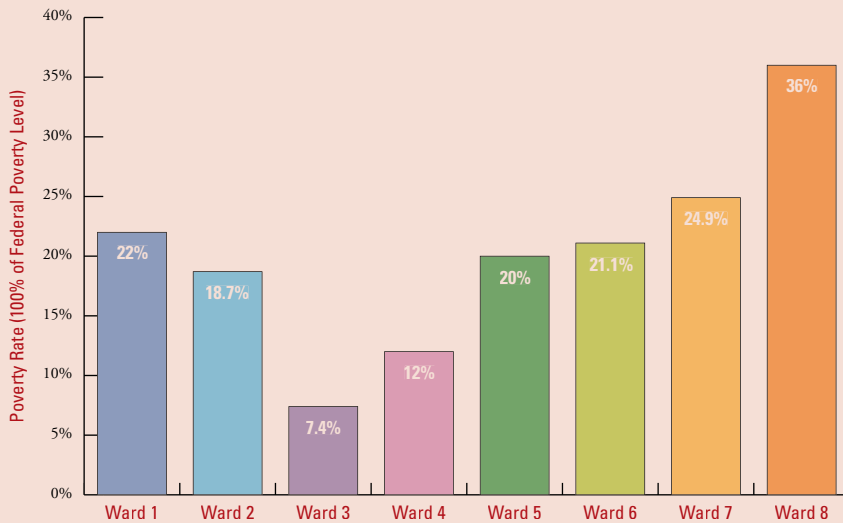


* In 2005, 100% of the Federal Poverty Level was \$9,972 for an individual and \$19,961 for a family of four. 200% of the Federal Poverty Level was \$19,944 for an individual and \$39,922 for a family of four.

*In 2006, income inequality in the District (*i.e.*, the gap between high-income and low-income households) was wider than in almost any other major city.*

CHART 2

POVERTY RATE BY WARD—2000



Ward 3 had the lowest levels with 2.7 percent of families and 7.4 percent of individuals living in poverty,⁴⁸ while in Ward 8, 33.1 percent of families and 36 percent of individuals live in poverty.⁴⁹ In Wards 1, 5, 6 and 7, 20 percent or more live in poverty. The wards with the highest poverty rates frequently experience higher unemployment rates:

INDIVIDUAL POVERTY AND UNEMPLOYMENT RATES BY WARD⁵⁰

WARD	POVERTY RATE (%)	UNEMPLOYMENT RATE (%) ⁵¹
1	22.0	5.1
2	18.7	5.9
3	7.4	7.0
4	12.0	4.0
5	20.0	8.4
6	21.1	6.0
7	24.9	7.4
8	36.0	11.6

B. Problems Associated with Poverty or Low-Income Status

Those living in poverty are more likely to experience a number of different legal problems. For example, these households are far more likely to rent than own their home and at least one study indicates that renters experience more legal problems than homeowners.⁵² Because those with low-incomes are usually dependent on public benefits to survive, issues concerning eligibility are also common. Section VI of this report details the varied legal issues facing the District’s low-income community.

Poverty also increases the likelihood that a person will struggle with family, education or public safety issues. A DC Fiscal Policy Institute study concluded that the District’s highest-poverty neighborhoods “suffer the highest rates of social problems such as violent crime, teen parenthood, low education achievement, and child abuse and neglect.”⁵³ The study found:

- Nearly 50 percent of all substantiated child abuse and neglect cases come from the poorest 20 percent of the District’s neighborhoods. The rate of substantiated abuse and neglect in these neighborhoods is seven times higher than in low-poverty neighborhoods and twice as high as in moderate-poverty neighborhoods;⁵⁴
- In the District’s poorest neighborhoods, 20 percent of elementary school students score at or above grade level, compared with 60 percent of students in the most affluent neighborhoods;⁵⁵ and
- The rate of violent crime in the poorest neighborhoods is six times higher than in the neighborhoods of lowest poverty.⁵⁶

Not only must low-income residents struggle to make ends meet, but they face unique obstacles in doing so. A 2007 report to the DC Attorney General concluded that households earning 80 percent or less of the area median income “pay higher prices than more affluent households for the same basic goods and services.”⁵⁷ For example, since low-income individuals are often excluded from the financial services market, they pay higher rates and fees for alternative financial products and services, such as rent-to-own transactions and subprime mortgage loans. As the Office of the Attorney General (OAG) noted last year, “[t]he disparity between what lower-income consumers pay and what moderate-to-higher income consumers pay for similar goods and services is a form of economic injustice that leaders in government and the private sector must work together to address[.]”⁵⁸

C. Poverty Strips District Residents of Knowledge and Resources

While poverty may increase the likelihood that a person will confront civil legal problems, it also significantly impedes the ability to address those problems. As noted in our community-based organization interviews, the cost of legal services is one of the primary reasons that low-income residents do not seek legal assistance.

The lack of financial resources, however, is only the tip of the iceberg. As the head of one community-based organization noted,

*Poverty isn't just poverty of finances. It is poverty of a broad set of issues and concerns. It is a poverty of access, education, resources and streams of knowledge that allow you to participate fully in society. This poverty includes [knowledge about] legal rights.*⁵⁹

Low-income residents may not perceive a problem as a legal one. Even if they have a problem, they lack knowledge of their legal rights and, as a result, often do not seek legal assistance.⁶⁰ The community-based organizations pointed out that when low-income residents finally identify a problem as a legal problem and try to obtain assistance, it is often at the tail-end of the matter, when it is too late to correct the problem or mitigate the resulting effects. Similarly, they do not know what legal resources can assist them. Legal needs studies conducted by other states repeatedly identify a lack of knowledge about legal services' availability as a common reason community members did not seek legal assistance.⁶¹

Perhaps most troubling, even if low-income individuals recognize that they have a legal problem and that free legal assistance may be available, many may not seek assistance

because they do not believe the system can produce a just result.⁶² These residents have often faced a lifetime of hardship and have come to accept defeat. Because this obstacle is so nebulous, it is also one of the most challenging to overcome.

Community organizations noted that the degree of poverty and geographic isolation can affect a client's experience in resolving legal issues. For example, for those in extreme poverty, even a \$35 fee for quick advice over the telephone can be cost prohibitive. The makeup of a household can also have an impact. Single parents may have a harder time getting services if they do not have child care assistance. 80 percent of children in low-income families⁶³ and 87 percent of children in poor⁶⁴ families live with a single parent.

The fact that certain wards of the District lack a significant legal presence may affect the residents' awareness of legal issues and services. One community organization noted that the Anacostia River is a significant psychological barrier for its clients. Some of the organization's clients in their twenties have never been west of the river. Residents in the poorest neighborhoods may not know any lawyers and may find them intimidating. Placing lawyers within these communities and partnering with existing community organizations helps to dispel these fears.

D. Interaction with Executive Branch Agencies and the Courts

Community organizations and legal services providers cited agency unresponsiveness, the provision of misinformation and overly bureaucratic procedures as impediments to the low-income community's access to civil justice. In addition, community organizations report that many low-income people find it difficult to understand and navigate the court system.

Because some have had negative interactions or perceptions about the legal system, they view it as a place to avoid. For example, one community-based organization representative noted that the organization's young clients have a negative view of the courts because that is where punishment is meted out. These residents may accept unfavorable and perhaps unjust results out of fear of the system. Frustration with the quality of court-appointed attorneys was also cited as a concern.

The disputes that typically bring poor families and individuals into the court system—housing, small claims, child support, custody—are often heard by divisions of the DC Courts with high volume dockets. Advocates have acknowledged that the courts have made significant strides over the years in increasing equal access to justice for low-income litigants. Despite these improvements, however, advocates

argue that some of the fundamental problems remain, e.g., courtrooms that handle such cases appear rushed and under-resourced.

The courts and agencies have taken steps to reach out to the low-income community and overcome these perceptions, but still more must be done to bridge the gap between the low-income community and the legal system. Community organizations suggested that the courts and other agencies improve cultural sensitivity, enhance access for persons with disabilities, streamline procedures and provide qualified language interpreters.

E. Additional Barriers to the Civil Justice System

For many persons who are poor, there are additional challenges created by disabilities, LEP status, age, illiteracy or status as a prisoner or ex-offender.

1. PEOPLE WHO ARE DISABLED

The U.S. Census Bureau reported that 21 percent of the District's population aged five and older (115,980 residents) suffers from some form of disability, compared with 16.7 percent of the U.S. population.⁶⁵ 37.6 percent of people age 65 and older reported a disability.⁶⁶

A large number of persons with disabilities have legal needs. Our survey asked legal services providers to report the number of people with disabilities requesting legal services in 2005. The 22 providers that were able to provide estimates reported that approximately 5,400 District residents with various disabilities, including mental illness, cognitive impediments, mobility impairments, deafness or blindness, requested legal services. In fact, this figure is likely higher as many disabilities are not obvious and many legal services providers do not track this disability data.

People with disabilities face the same legal issues as anyone else, but their disabilities also may give rise to unique legal problems and obstacles in the civil justice system. Physical access to legal services is the most obvious obstacle. There may also be communication barriers. For instance, many providers are not equipped to communicate with residents who are deaf or provide the particular services that people who are blind need. Residents suffering from mental illness may feel stigmatized, which in turn, may affect their ability to obtain legal services. One community leader observed:

When you have clients dealing with issues of mental illness and a history of substance abuse, it is very difficult to have a separation between how the client is viewed and what has happened to them, so there are

*definitely issues of disenfranchisement—it is not an equal playing field.*⁶⁷

2. PEOPLE WHO ARE LIMITED ENGLISH PROFICIENT

The Florida Supreme Court Task Force on Racial and Ethnic Bias has correctly noted that, “To a minority for whom English is not the primary language, language barriers only heighten the desperation that justice is simply beyond reach, no matter what the truth or consequences.”⁶⁸

Households in which a language other than English is spoken often have more legal problems than their English-speaking counterparts.⁶⁹ Language barriers can also impede equal access to the full array of social services and benefits to which these residents may be entitled, including health care, welfare, unemployment and disability compensations programs and credit.⁷⁰ Compounding the problem, LEP residents face additional barriers in entering and navigating the justice system. Like many others with low incomes, LEP individuals are often unaware of their legal rights and responsibilities and do not know where to turn when they have a legal issue. For example, in listening sessions conducted by the DC Bar Foundation and the Commission, one participant noted that many members of the African immigrant community are not aware that legal or social services even exist and, further, that the failure to receive information in a language they understand has led to a significant amount of misinformation in the community.

Certain cultural influences and a lack of identification with the legal system may leave LEP residents particularly reluctant to seek redress. As an example, the Hispanic immigrant population may face challenges posed by the differences between the common law system practiced in the U.S. and the civil law system used in Latin America.⁷¹ Our interviews of community-based organizations also revealed that some LEP immigrants are afraid to deal with police and the judicial system due to both cultural differences and negative experiences in their home countries. This fear deters them from seeking a judicial remedy even when one may be available.

All too often, the language barrier prevents LEP residents from exercising legal rights effectively or at all. These residents find it difficult to communicate with lawyers. For *pro se* LEP litigants, the barriers are even greater. Litigants representing themselves already face a difficult task in properly preparing documents for court. Imagine the difficulty in preparing such documents if you do not speak the language. Even seemingly simple tasks, like figuring out where to file a pleading, can be a tremendous hurdle. Interviews with community-based organizations indicate that the lack of knowledge regarding their rights, combined with a dearth of

interpreters and fear of the justice system, create an LEP population vulnerable to unethical lawyers.

According to the 2000 Census, there are approximately 38,000 LEP residents in the District, an increase of 30 percent since 1990. Spanish speakers constitute two-thirds of these residents. Other large language groups include French, Amharic, Chinese and Vietnamese. Contrary to popular belief, the lack of English fluency is not just a problem facing immigrants. Over 20 percent of the District's LEP population was born in the U.S.

The growth in the number of LEP speakers is increasingly apparent in our judicial system. In 1987, the DC Superior Court required interpreters on 900 occasions. This figure rose to 6,749 in 2006.⁷² Access to Justice Commissions and similar bodies in other states have begun detailing the challenges the civil legal system faces in trying to serve a growing LEP population.⁷³ These challenges include conducting outreach in foreign languages; finding qualified interpreters (particularly those trained in legal interpretation) and bilingual staff; and training monolingual employees (in the courts and government agencies) to properly assist those who are not proficient in English.

3. PEOPLE WHO ARE ELDERLY

The elderly population in the District is significant and growing. Approximately 12 percent of District residents are 65 or older.⁷⁴ Between 2005 and 2020, the number of people over 65 in the District is expected to increase by 48 percent.⁷⁵ While 15 percent of this group lives in poverty, the elderly are also taking on increased familial responsibilities. In the District, 14.5 percent (or 16,723) of all children live in grandparent-headed households.⁷⁶

In addition to the barriers experienced by the low-income community in general, the low-income elderly population confronts its own set of challenges. Their legal needs are wide-ranging, including housing and long-term care, abuse and neglect, consumer exploitation, estate planning, public benefits, Medicare and insurance issues. The ability to address these problems may be impaired by lack of physical access to, or awareness of, legal resources due to limited mobility,⁷⁷ decreased physical and mental health capacity and lack of knowledge regarding computers or the Internet.

4. PEOPLE WHO ARE ILLITERATE OR LOW LITERATE

Illiteracy is a tremendous problem in the District. A 2007 report concluded that more than one-third of the District's adult population is functionally illiterate.⁷⁸ The report found a direct relationship between low literacy and unemployment.⁷⁹ The wards with the highest levels of poverty also have the highest percentage of low-literate adults. The typical adult with low literacy skills is likely to live in poverty, lack a high school diploma and live in rental or subsidized housing.⁸⁰ They are also disproportionately African American or Hispanic.⁸¹ Nationally, persons with multiple disabilities are also overrepresented among the low literate.⁸²

A lack of basic literacy presents substantial obstacles to the civil justice system. The inability to read may diminish a person's awareness of legal problems, not to mention access to information concerning one's rights and the availability of legal services. Many tools that the legal services community uses are ineffective in reaching residents who are low literate or illiterate. Resources such as the Internet, legal pamphlets and brochures and *pro se* forms are of little to no assistance to individuals who cannot read them.

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5. PRISONERS AND EX-OFFENDERS

Prisoners and ex-offenders also experience unique legal problems and substantial obstacles in the civil justice system. Over 7,000 District inmates are held in 99 federal Bureau of Prisons' facilities across the country and more than 3,500 are held in the District's Central Detention Facility and Correctional Treatment Facility.⁸³ Legal services providers report that the prison population faces a multitude of unaddressed legal issues, including institutional violence, inadequate medical and mental health care and substandard conditions of confinement.⁸⁴ Compounding these problems, inmates have limited access to the courts and legal resources.⁸⁵

The District also has a large number of ex-offenders, making reentry into the community a significant issue.⁸⁶ Ex-offenders forced to deal with unstable housing, neighborhood distress and unemployment experience higher rates of recidivism.⁸⁷ Ex-offenders may be subject to discrimination in employment and housing as a result of their status, making their reintegration very difficult. Only 40 percent of the District's recent ex-offenders are employed and nearly 75 percent of the District's offender population has a history of substance abuse.⁸⁸ In addition, formerly incarcerated persons may be excluded from public housing and denied other public benefits. Indeed, several community organizations mentioned expungement of criminal records as an area of legal need for the low-income population.

The Court Services and Offender Supervision Agency (CSOSA) is the probation and parole system for adult offenders in the District. In September 2005, the agency monitored 15,708 people, an increase of 12 percent from September 2003.⁸⁹ Of those under supervision, 90 percent are African American;⁹⁰ 40 percent of the offenders have not completed high school.⁹¹

Women also face unique legal issues, both in prison and after they are released.⁹² For those with minor children, even a brief period of incarceration means they will temporarily lose custody of their children. Few resources exist to ensure that family ties remain intact and that a mother released from prison or jail will be



reunited with her children.⁹³ Many women enter the correctional system pregnant, and some become pregnant while they are incarcerated.⁹⁴ These women face such issues as limited reproductive freedom of choice (including both abortion and contraception),⁹⁵ inadequate prenatal and postnatal care and disruption of the mother/child bond.⁹⁶ Some women experience abuses ranging from verbal harassment to physical and sexual abuse and are threatened with physical harm or disciplinary action if they complain.⁹⁷ Upon release, women tend to have a harder time reconnecting with their families and their communities.⁹⁸ When they seek housing, they often must find a home not only for themselves, but for their children as well.⁹⁹

One legal services provider stated that women in prison are some of the most underrepresented individuals. Child custody, visitation and divorce are significant issues for these women, with little assistance available. Personal injury representation is also a commonly unmet need.

Another provider said that the high rate of incarceration of young African American men is perhaps the most important legal issue facing the District. The provider suggested that this issue can only be improved with a far-ranging approach that addresses educational outcomes, broader economic opportunities and expanded access to community-based drug and mental health treatment. The provider noted that alternatives to incarceration and ex-offender reentry programs, including housing, job training and education, must also be available if this problem is to be overcome.

V Overview of the Legal Services Delivery System



The legal services delivery system consists of a number of legal services providers, private law firms and attorneys who do pro bono work, government agencies and law school clinics that collectively try to meet the legal needs of the District's low-income community.

A. Legal Services Providers

1. STRUCTURE

The District's legal services providers range from a single attorney to programs with more than 30 lawyers. The following features characterize these providers.

- a. **Combination of General Services and Specialty Programs.** Legal services for low-income District residents have been available since at least 1932 when the Legal Aid Society (LAS) was founded. In the 1960s, the Neighborhood Legal Services Program (NLSP) was one of an original five federally funded programs. At its height, NLSP had 75 lawyers in more than a dozen neighborhood offices. Both LAS and NLSP covered general poverty law issues, such as public benefits, housing and family law. Legal Counsel for the Elderly (LCE) was founded in the 1970s to provide general services to seniors.

Starting in the 1980s, specialty programs have emerged to meet needs that were not being fully addressed by the generalists. Initially, these programs targeted disfavored populations and led to the founding of such programs as the Washington Legal Clinic for the Homeless (WLCH) and the DC Prisoners' Legal Services Project (DCPLSP).¹⁰⁰ Later, programs were founded to meet other needs. Women Empowered Against Violence (WEAVE) was created to address the needs of survivors of domestic violence. The DC Employment Justice Center (EJC) sought to address the needs of workers. The legal needs of abused and neglected children were tackled by the Children's Law Center (CLC). Advocates for Justice and Education (AJE) was founded to assist children with special education needs. Quality Trust for Individuals with

Disabilities (Quality Trust) was founded to provide legal help to persons with developmental disabilities.

An increasing number of immigrants settled in the District in the 1980s, first from Central America and more recently from other parts of the world. Several programs were formed specifically to provide legal help to these immigrants: Ayuda, the Central American Resource Center (CARECEN), Capital Area Immigrants Rights (CAIR) Coalition and the Asian Pacific American Legal Resource Center.¹⁰¹

The vast majority of providers target a specific population or legal problem. Although these specialized programs tend to be smaller, a majority of the legal services lawyers work in one of the problem or population specific organizations.

In addition to programs that target poverty law issues, there is an active civil rights community, including the Washington Lawyers' Committee (WLC). Legal services groups, including LCE, WLCH, LAS and University Legal Services (ULS), also use civil rights laws to protect clients' rights. The relatively large number of legal services providers in a city the size of the District provides the capacity to target specific hard-to-reach populations and allows providers to implement a range of practice models. Having many providers increases the likelihood that a person denied services from one provider due to a conflict (*e.g.*, the legal services provider already represents the other side in the dispute) will have other options. Even then, however, only a handful of providers work in any particular subject area.

- b. Diversity of Practice Models.** An exciting element of the District's anti-poverty legal services network is the diversity of its practice models. Some programs function as traditional law offices (NLSP), others hold intake in shelters (WLCH) or church basements (LCE). Programs are attempting to move services into communities of highly concentrated poverty. DC Law Students in Court (LSIC) has long provided services at the courthouse. New initiatives of the DC Bar Pro Bono Program, NLSP, Bread for the City (Bread) and LAS also have placed lawyers on site at the DC Courts.

There has been an increase in partnerships between legal and non-legal social services providers. CLC has a series of medical/legal initiatives, LAS is co-located

with a pediatric clinic and domestic violence providers (WEAVE and LAS) have teamed up with the DC Courts and others to form Domestic Violence Intake Centers in the DC Superior Court, and at Greater Southeast Community Hospital. An intake center at Fort Totten opened in 2008.

Since the mid-1980s, several social services programs have added legal components. This led to the legal programs at Bread, Whitman Walker Legal Clinic (WWLC), Our Place DC (OPDC) and others. Such legal programs embedded in larger organizations become part of a continuum of services that can address clients' needs in a more holistic fashion. Clients who are receiving other services—medical, social, nutritional—can be screened for legal problems and referred to a lawyer who works with the other professionals in the organization to solve problems using interdisciplinary approaches.

Each program has its own case acceptance criteria. These criteria serve a triage function so that only the cases deemed to be of greatest importance will be considered. No two programs have the same criteria. Almost all have income guidelines, which range from 125 to 300 percent of the poverty level. Absent unusual circumstances, a person who earns above a program's income guidelines will not receive services.

- c. Pro Bono and Staffed Models.** Virtually every program uses a blend of full-time paid staff and pro bono attorneys to provide services. Pro bono and legal services lawyers have developed a variety of working relationships. Many cases are done by the law firm completely in-house, with the pro bono attorney contacting the provider only when there are questions or to give periodic updates. Others have the law firm and legal services attorney serving as co-counsel. And in others, the law firm does not represent clients at all, but rather represents the legal services provider in a general counsel capacity.

Several programs have designed their practice model around the use of pro bono. For example, the DC Bar Pro Bono Program uses volunteers to staff legal clinics and resource centers and assigns cases to law firms at law firm pro bono clinics. Volunteers for the WLCH conduct intakes at homeless shelters throughout the District. These programs have developed a staff-

The vast majority of providers target a specific population or legal problem. Although these specialized programs tend to be smaller, a majority of the legal services lawyers work in one of the problem or population specific organizations.

ing or mentoring structure that supports the volunteers. Other programs are more cautious about using pro bono, out of concerns that they do not have sufficient staff to mentor and supervise pro bono attorneys, or think that not all pro bono attorneys will understand the issues or concerns of persons living in poverty. See Sections V.A.7 and VIII.D for a more detailed discussion of pro bono services in the District.

- d. Representation and Pro Se Support.** Most programs' assistance ranges from helping people proceed with a case on their own (hereinafter *pro se* support) to providing legal representation for the entire matter. Across the legal services network, the largest number of clients served and the greatest commitment of time is given to brief advice and *pro se* support, with less to extended representation. This is true for several reasons. Several programs, such as the EJC and AJE, use *pro se* support as a strategy to create client empowerment. By teaching clients to resolve their own problems, they acquire skills to address issues that might arise in the future. Other programs provide advice or brief assistance because they lack the capacity to do anything more. See Sections V.A.3.a and VIII.B.1, *infra*, for additional information.
- e. Systemic Advocacy.** The legal services network conducts little systemic litigation. As discussed in Section VIII.C, *infra*, this is largely the result of limited resources and undercuts the legal services network's ability to bring about much-needed structural and other far-reaching changes. Nevertheless, although the volume of work in this area is still small, many providers have set aside some time to work on broad-based or systemic issues. In the 1980s and early 1990s, a significant emphasis was placed on impact litigation that placed many social services agencies under court order.¹⁰² In the last decade, the emphasis has shifted to legislative and administrative advocacy. This has led to important legislative and policy victories, but left unresolved issues that could be addressed through a judicial decision.

In recent years, there has been a growing recognition of the importance of bringing cases to the DC Court of Appeals to affect the development of the decisional law. This led to the creation of the Domestic Violence Legal Empowerment and Appeals Project (DVLEAP) and the Appellate Advocacy Project at LAS. In addition, LSIC and other programs have increased their presence in the DC Court of Appeals, significantly strengthening the poverty law voice there.

2. REFERRALS AND COLLABORATIONS

Most providers assess whether a person seeking assistance has legal needs other than those identified by the person himself. Some use intake forms that ask questions about a range of issues to identify needs. Often, other legal issues will emerge during an initial interview. If the provider cannot handle these other issues, it will almost always try to make a referral.

Virtually all the providers receive referrals from other entities, including: other legal services providers, social services organizations, community groups, courts, law firms, law school clinics, DC police, jails, government agencies, former clients and relatives/friends of clients. The majority of legal services providers report that at least half of the referrals fell within their mission, expertise and income/eligibility requirements. Providers that focus on a particular legal issue (*e.g.*, employment, domestic violence or education) were more consistent in reporting that a high

percentage of referrals met their criteria. Of course, just because a referral falls within a provider's mission, expertise and income/eligibility requirements does not mean that the person will be served. The provider still must have the capacity to help.

The community-based organizations we interviewed seldom were aware of the number of legal services providers in the District. Each organization had a few providers it referred clients to, but most did not know about the extent of the legal services network. These organizations commented that it would be useful to have an updated referral manual listing the District's legal services providers, the services provided and how to make a referral. Many suggested that the legal services network establish a centralized "broker,"—*e.g.*, an office or a hotline that organizations and/or clients can contact to find out where to get legal services for their particular type of problem.¹⁰³

Legal services providers have sought to stretch their limited resources and improve the quality of services by collaborating with other legal and social services providers, as well as pro bono attorneys and private practitioners.¹⁰⁴ All of our survey respondents said they collaborate with others. The collaboration may consist of co-counsel or formal referral agreements, co-sponsoring training sessions, working together in coalitions and jointly undertaking outreach. Some of the collaborations are formalized in some way, such as belonging to the same coalition, while others are more ad hoc (*e.g.*, commenting on specific legislation).

Both legal services and social services providers recognize that collaborations are extremely important.¹⁰⁵ First, it is the rare client who comes in with only a discrete legal problem. Clients frequently have a number of needs (both legal and non-legal) that require a range of responses. As noted by the community-based organizations, legal services providers gain credibility when they work with social services groups because the groups already have well-established ties in the community. Thus, it might be easier to build trust with a prospective client (who may need to give very personal information to a legal services lawyer) if a well-respected community-based organization referred the client. Finally, it tends to be less costly for a legal services provider to place a lawyer or two in a community-based organization than it is for the provider to rent separate space in the community or to house the lawyers downtown.

3. PROVISION OF SERVICES

a. Types of Services. There is a range of ways to serve persons seeking assistance. Some may want only information, such as materials explaining how to apply for public benefits. Others may need a brief meeting with a lawyer for advice about the merits of their case. Still

others need assistance getting to the right legal services provider. These are, relatively speaking, the easy cases. What is much more difficult and much more troubling for those on the front lines every day, is dealing with potential clients whose needs are much greater. In many cases, the providers do not have capacity to address fully these legal needs.

Our survey asked about the ways in which legal services are provided (*e.g.*, full representation, limited advice, referrals, distribution of self-help materials) and the number of people served by each method. Each of the organizations listed in Appendix C responded, although not every organization responded to questions about every type of service. Collectively, legal services providers supplied full representation (representation through the resolution of the matter) to nearly 3,600 people in 2005.¹⁰⁶ More than 23,000 people received limited advice and several thousand received a referral to another provider. More than 15,000 received self-help materials.¹⁰⁷ The work of government agencies and pro bono attorneys is not included in these figures.¹⁰⁸

People with legal problems or questions also rely on the Internet to get legal information. In the last few years, the legal services network has developed an on-line resource manual, LawHelp (available at www.lawhelp.org/dc), that contains basic legal and referral information about the legal services providers and law school clinics as well as a great deal of legal information intended for non-lawyers. There is a great need for this electronic resource, but it is underutilized. The website had over 45,000 hits and nearly 100,000 page views in 2007. However, our interviews with social services providers, court personnel and intake staff at legal services providers revealed that LawHelp is not well known or regularly used. The Commission has been working with the DC Bar Pro Bono Program to raise the community's awareness of this resource.

Our interviews also made clear that an on-line resource is not a viable option for everybody. The percentage of low-income people who use the Internet is lower than the general population,¹⁰⁹ and even those who do use it may not rely on it to get information about their legal problems. As a result, most providers continue to use paper referral lists or may print out referral information from the LawHelp website and hand it to people seeking assistance.

b. Capacity to Serve Special Populations. In Section IV.E, we discussed several subsets of the low-income community that face heightened obstacles to the civil legal system. Our survey focused on the ability of pro-

viders to serve two of these groups—residents who are LEP and residents who are disabled.

i. Residents Who Are Limited English Proficient

a) Number Seeking Help. We surveyed legal services providers to estimate the number of LEP District residents who sought legal assistance in 2005.¹¹⁰ We asked providers to classify a person as LEP if the person had difficulty communicating in English because it is not that person’s first language. 24 providers submitted data.¹¹¹ Many legal services providers do not precisely record the number of LEP people who sought help, so the following numbers are estimates. In addition, the same person may have sought assistance more than once from the same provider or a different provider. Nonetheless, the figures give a sense of the order of magnitude in which LEP people sought assistance.

DISTRIBUTION OF RESIDENTS SEEKING ASSISTANCE WHO ARE LIMITED ENGLISH PROFICIENT

LANGUAGE	APPROXIMATE NO. SEEKING ASSISTANCE ¹¹²
SPANISH	5,900
FRENCH	700
AMHARIC	200
CHINESE	120
VIETNAMESE	60
ARABIC	40
KOREAN	LESS THAN 10
RUSSIAN	LESS THAN 10
FARSI	LESS THAN 10
OTHER	LESS THAN 10

Spanish was by far the most common language spoken by LEP speakers who sought legal assistance. Nearly 90 percent of the legal services providers responding to this question had a LEP Spanish speaker seek assistance. Chinese and Amharic speakers each sought help from 11 providers and Vietnamese speakers sought help from nine.

b) Availability and Limitations of Using Bilingual Staff Members. Survey respondents rely on a variety of ways to meet the language needs of the LEP community. 21 out of the 24 legal

services providers have at least one bilingual staff member.¹¹³ Simply being bilingual, however, does not qualify one to be a competent interpreter.¹¹⁴ Additional skills are needed beyond language fluency.¹¹⁵ Many survey respondents also relied on bilingual volunteers. Very few providers assess bilingual competency to determine if the staff member or volunteer is qualified to communicate in the foreign language. Only one survey respondent sought to meet its clients’ language needs by developing a pool of trained legal interpreters. Other groups occasionally seek interpreters from this pool.

It is unlikely that bilingual staff members alone can meet the language assistance needs of the District’s LEP population. It would be extremely difficult to have bilingual staff members available at every provider to handle even the most common foreign languages spoken in the District. Moreover, these staff members have their own responsibilities, making it difficult for them to respond every time an LEP speaker of their language comes in seeking assistance. Finally, as explained above, these staff members should not be expected to serve as interpreters absent specialized training.

In addition to language skill, there is a need for bicultural staff as well as staff that is culturally competent to develop necessary relationships of trust and confidence. Across cultures, the roles of gender, race, class, respect for authority, directness of communication, privacy and other issues vary greatly. Staff needs to be attuned to these differences. It is very valuable for providers to recruit attorneys who have these skills. There are relatively few lawyers who possess these assets, which makes it challenging for programs to hire staff. Those lawyers who do have the appropriate cultural and language skills may be dealing with the burden of law school debt, which makes it difficult to take a job with a legal services provider; meanwhile, they are often being recruited heavily by other segments of the profession.

c) Other Problems with Providing Language Assistance. The legal services network is not fully equipped to address language barriers. Providers have varying levels of resources, but all too often have to make do using less than adequate means. And sometimes even capable interpreters cannot entirely overcome the language barrier. For example, one community leader noted that

even when the courts provide interpreters, his clients often will refuse to use them because the interpreters are themselves part of the same ethnic community. Despite assurances of confidentiality, many clients fear that interpreters will disclose their private information to the community at large.

Our discussions with legal services providers throughout the District indicated a growing concern about the relative lack of translated materials for LEP speakers, particularly in languages other than Spanish. Translating commonly used documents once is far more efficient than relying on interpreters every time LEP speakers need to know the contents of a document. Moreover, having one translated document reduces the likelihood of interpreter error that may arise when a document is translated repeatedly.

- d) Commission Action in Response.** The Commission is taking steps to address the needs of LEP residents. We sought and received funding from the District government so that the legal services network could create a shared legal interpreter bank to expand the pool of qualified interpreters and translators. This bank will recruit interpreter candidates, train them, assess skill levels and make these interpreters available to legal services providers that need to communicate with their clients. The interpreter bank is just one step in the process of ensuring that a lack of fluency in English does not become a barrier to justice. Our survey results and discussions with providers indicate that much more must be done to ensure equal access to justice for these individuals.

ii. Residents with Disabilities.

Virtually every legal services provider received requests for assistance from residents with disabilities. Providing equal access to these individuals is challenging. For instance, the accommodations needed to assist someone with a mobility impairment differs greatly from those needed for someone who is blind or mentally disabled. Additional complications arise when a person has multiple disabilities, which is frequently the case.

The majority of legal services providers reported that they are accessible to those with mobility impairments. For those with mental illness or a cognitive disability, some providers have medical professionals or social workers on staff or who work in affiliated organizations to assist the lawyers. Others have lawyers with extensive experience working with this client population. Very few providers reported having in-house resources to obtain interpreters for those who are deaf or materials in alternative formats for those who are blind. A few providers, such as Quality Trust and ULS, focus on serving people with disabilities. These providers reported having the most accommodations available to serve disabled clients.

The legal issues arising out of disabilities regularly require specialized skill and knowledge. Fair housing rights, access to specialized medical services and disability benefits often involve complex issues that can be best addressed by an attorney with expertise. The District is fortunate that there are several attorneys with this expertise throughout the legal services community.

As noted in Section IV.E.1, *supra*, people who are elderly constitute the highest percentage of people living with disabilities. LCE, which focuses on serving people over 60, has a limited home visit program to reach homebound residents and conducts outreach at nursing homes and senior centers. LCE

Our discussions with legal services providers throughout the District indicated a growing concern about the relative lack of translated materials for LEP speakers, particularly in languages other than Spanish.



reports that the need of homebound individuals for legal services exceeds the resources it can commit. LCE also operates a hotline, so that people can receive advice about their legal problems without having to come to an office.

4. BUDGET OF LEGAL SERVICES PROVIDERS

26 legal services providers gave us information about the amount of money they received from various revenue sources in 2005. Excluding funds used to serve non-District residents, provide non-legal services and provide legal services in cases with a right to counsel, these providers had a combined budget of about \$15.2 million. *See* Chart No. 3, “Revenue Sources for Legal Services Providers—2005.”

While we asked for 2005 data, many providers’ fiscal years do not correspond to the calendar year. In these cases, we used the fiscal year data that was closest to calendar year 2005. Parts of this funding are restricted in terms of the populations that must be served (*e.g.*, the elderly, victims of domestic violence or the disabled) or subject area that must be covered (*e.g.*, housing). These restrictions limit providers’ ability to shift their areas of service and case priorities to meet emerging needs.

In 2005, the federal government and law firms each contributed about 20 percent of the collective budget. *See* Chart No. 3. About 16 percent of legal services providers’ budgets come from individuals. By contrast, individuals account for approximately 75 percent of charitable giving to nonprofit organizations nationwide.¹¹⁶

The budgets of individual providers in 2005 dedicated to serving District residents ranged from \$60,000 to \$2 million, with the plurality falling in the \$100,000 to \$500,000 range. *See* Chart No. 4, “Budgets for Legal Services Providers—2005.”

The above budget figures do not take into account the \$3.2 million in District funding that began in fiscal year 2007 and do not include the fact that IOLTA proceeds tripled between 2005 and 2007. IOLTA totaled about \$2 million for the fiscal year ending June 30, 2007.¹¹⁷ Chart No. 5, “Revenue Sources for Legal Services Providers—Includes Public Funding and IOLTA Increases” provides a snapshot of the revenue sources when these extra funds are taken into account. Even then, however, the legal services network still has far fewer resources than necessary to meet the needs that exist in every subject area.

Legal services providers have a diversified funding base, but the overall amount of money dedicated to their services pales in comparison to the money dedicated to other aspects of our justice system, as illustrated below.

FUNDING DIRECTED TO THE VARIOUS ASPECTS OF THE JUSTICE SYSTEM

ENTITY	FY 2005 FUNDING (\$)	FY 2007 FUNDING (\$)
DC COURTS ¹¹⁸	134.0 MILLION	136.8 MILLION
FUNDING TO PAY FOR INDIGENT		
DEFENDANTS IN CRIMINAL CASES ¹¹⁹	55.4 MILLION	61.6 MILLION
OFFICE OF THE		
ATTORNEY GENERAL ¹²⁰	62.4 MILLION	83.6 MILLION
LEGAL SERVICES PROVIDERS	15.3 MILLION	20.0 MILLION (EST.)

Moreover, the other entities are entirely government funded, while legal services providers raise about two-thirds of their budgets from private sources.

In addition, the compensation for legal services attorneys is far lower than the cost per attorney in either the private sector or the government. Starting salaries of first year associates at many large law firms are now \$160,000 a year with significant benefits. An incoming legal services lawyer would be lucky to make 25 percent of that amount. Lawyers in the federal and District governments also make significantly more money than those working for legal services providers. Fringe benefits that private sector and government employees take for granted, such as an employer match for retirement account contributions, a flexible spending account or employer-paid Metro fares, are frequently nonexistent for legal services providers. The effects of these low salaries have been well documented nationally.¹²¹

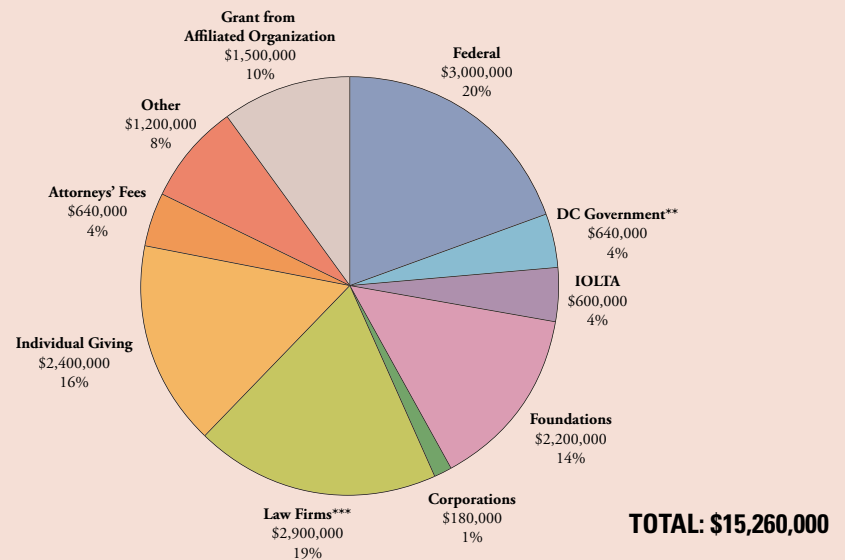
Fortunately, the Poverty Lawyer Loan Repayment Assistance Act, which the Council passed in 2006, has provided some help. The Act provides for up to \$1,000 per month in loan repayment assistance for qualified lawyers working and living in the District. The DC Bar Foundation administers this program. The DC Bar Foundation uses its own funds to provide loan repayment assistance to lawyers who do not live in the District, but who work for DC-based legal services programs. Loan repayment assistance is a significant benefit for lawyers with large educational debts, but it does not address the needs of everyone. In particular, low salaries for legal services staff put severe financial strains on those who may not have educational debt but have other financial obligations.

5. STAFFING

Legal services providers reported that approximately 220 FTE positions served District residents in 2005. Approximately 140 of these were lawyer positions.¹²² These figures do not

Chart No. 3

REVENUE SOURCES FOR LEGAL SERVICES PROVIDERS—2005*



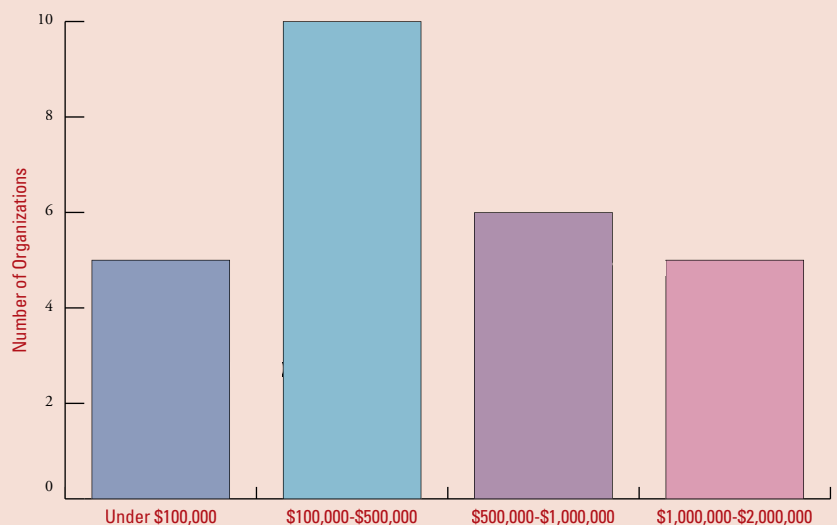
* Providers that were not able to give calendar year data submitted fiscal year data. These figures do not include (1) the portion of the budget used to serve non-District residents for organizations that also provide legal services in Maryland and Virginia and (2) the portion of the budget allocated to cases where there is a right to counsel.

** This figure includes some federal money that the District government must match in order to receive the grant. The figure does not include the budget of District agencies that do some legal services work (e.g., Office of the Attorney General).

*** This figure includes \$500,000 that the DC Bar Foundation received from law firms in 2005.

Chart No. 4

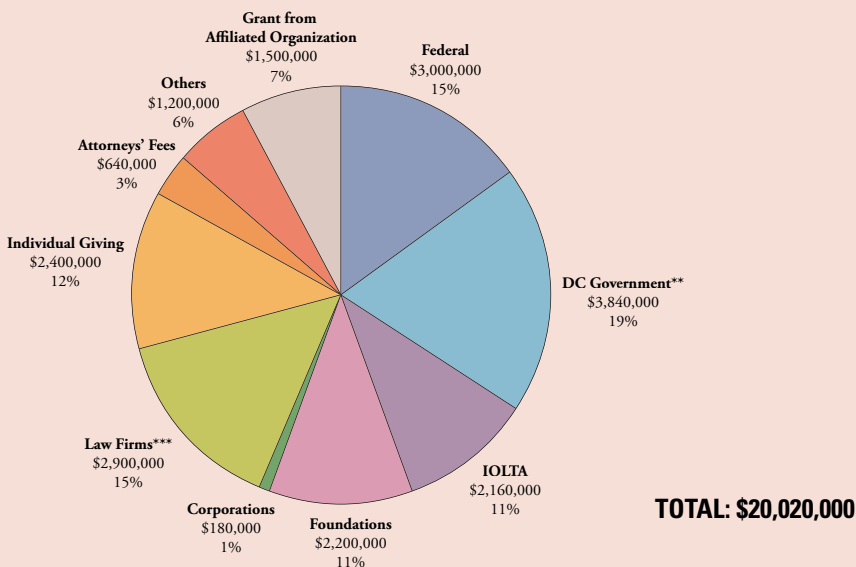
BUDGETS FOR LEGAL SERVICES PROVIDERS—2005*



* These figures do not include (1) the portion of the budget used to serve non-District residents for organizations that also provide legal services in Maryland and Virginia and (2) the portion of the budget allocated to cases where there is a right to counsel.

Chart No. 5

REVENUE SOURCES FOR LEGAL SERVICES PROVIDERS—INCLUDES PUBLIC FUNDING AND IOLTA INCREASES*



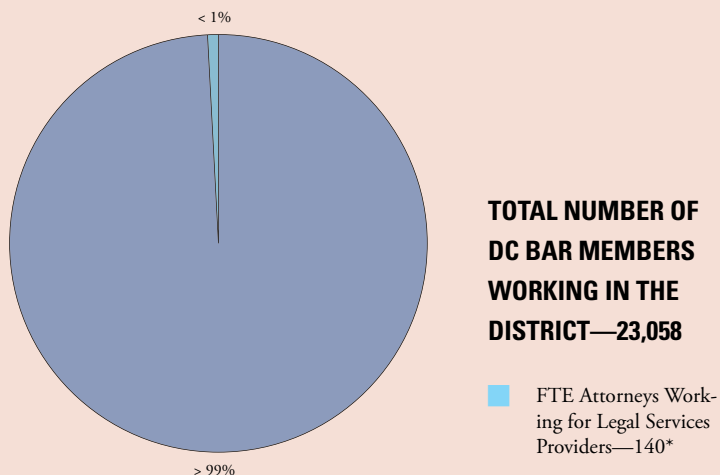
* These figures reflect the increase in revenue due to the public funding for civil legal services and the increase in IOLTA proceeds that both occurred in FY 2007. The other figures are from the 2005 data, but we are not aware of significant changes in the other categories.

** This figure includes some federal money that the District government must match in order to receive the grant. The figure does not include the budget of District agencies that do some legal services work (e.g., Office of the Attorney General).

*** This figure includes \$500,000 that the DC Bar Foundation received from law firms in 2005.

Chart No. 6

FTE LEGAL SERVICES ATTORNEYS AS PERCENTAGE OF DC BAR MEMBERS WORKING IN THE DISTRICT



* The figure for legal services attorneys does not include (1) FTE time spent serving non-District residents for organizations that also provide legal services in Maryland and Virginia and (2) FTE legal services attorneys working on cases where there is a right to counsel. The figures include the executive directors and other managers working for legal services organizations since almost all of them are attorneys.

include the 31 new lawyers hired with the public funding that the District government appropriated beginning in fiscal year 2007. As with the budget figures, the staffing data also reflects only the number of attorneys working on behalf of District residents, and does not include attorneys working on cases where the government is required to provide counsel pursuant to a statute.¹²³ As Chart No. 6, “FTE Legal Services Attorneys as Percentage of DC Bar Members Working in the District” indicates, legal services lawyers comprise less than 1 percent of the DC Bar members who work every day in the District.

The overwhelming majority of these lawyers are located in Northwest DC, particularly downtown. In 2005, only about 12 FTE positions were located east of the Anacostia River. The fiscal year 2007 public funding has more than doubled this number.

Most legal services providers are relatively small. In 2005, half had three or fewer lawyers working for them. See Chart No. 7, “Legal Services Providers by Number of FTE Attorneys on Staff—2005.”¹²⁴

Legal services attorneys working in the family law, housing and disability/health areas constituted over 50 percent of all the legal services attorneys in 2005. See Chart No. 8, “Total FTE Legal Services Attorneys Broken Down by Subject Area—2005.”¹²⁵

Other subject areas, such as consumer and education, only had about five FTE attorney positions each. The fiscal year 2007 public funding added seven housing lawyers. The remaining 24 lawyers hired by the providers with this public funding are fairly well spread out among the other subject areas. While there are additional legal resources available to low-income residents who face poverty law issues (e.g., pro bono attorneys, government agencies, private lawyers taking cases on a contingency or reduced fee basis),

the core responders to these civil legal needs remain the legal services lawyers. As Chart No. 9, “Comparison of FTE Attorneys Working for Legal Services Providers and District Residents Below 200 percent of Federal Poverty Level—2005” indicates, the number of people legal services providers are trying to reach and potentially serve vastly exceeds the capacity of legal services attorneys.

6. TRAINING

Our survey found that about 50 percent of the legal services providers supply training to their managers other than on-the-job training and more than 75 percent provide training to their staff attorneys. A majority supply training to their support staff, law student interns and pro bono attorneys. In addition to the training done by individual providers, the DC Bar Pro Bono Program offers an array of training options for pro bono attorneys.

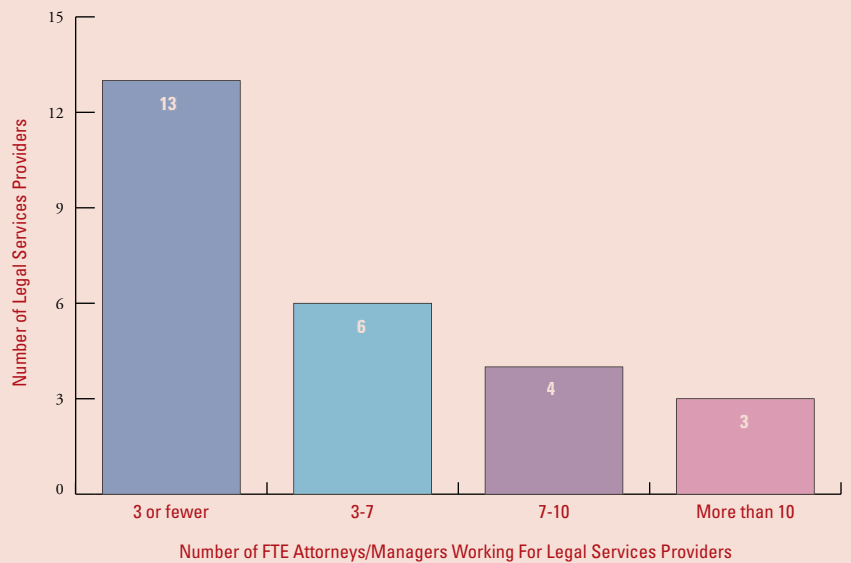
The above data refer to the percentage of providers that supply a particular type of training, not the percentage of staff receiving it: a provider with over 20 attorneys would count the same as an organization with just one attorney. The larger providers tend to have more extensive training programs, but this is not always the case.

The training can take several forms, such as in-house “boot camps,” continuing legal education courses, national and local conferences and web-based tutorials. For the first time, the Consortium of Legal Services Providers (Consortium),¹²⁶ in conjunction with the DC Bar Pro Bono Program, put together a comprehensive training program in 2007 for new legal services attorneys. Other organizations, such as the Washington Council of Lawyers, have skills-based training sessions that are intended for legal services lawyers.

Our survey asked about the type of training that providers would like

Chart No. 7

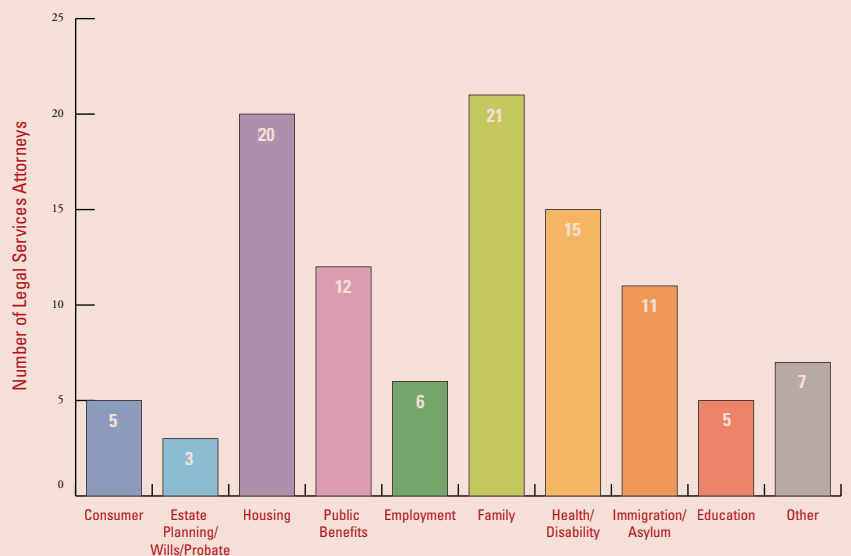
LEGAL SERVICES PROVIDERS BY NUMBER OF FTE ATTORNEYS ON STAFF—2005*



* The figures for legal services attorneys do not include (1) FTE time spent serving non-District residents for organizations that also provide legal services in Maryland and Virginia and (2) FTE legal services attorneys working on cases where there is a right to counsel. The figures include the executive directors and other managers working for legal services organizations since almost all of them are attorneys.

Chart No. 8

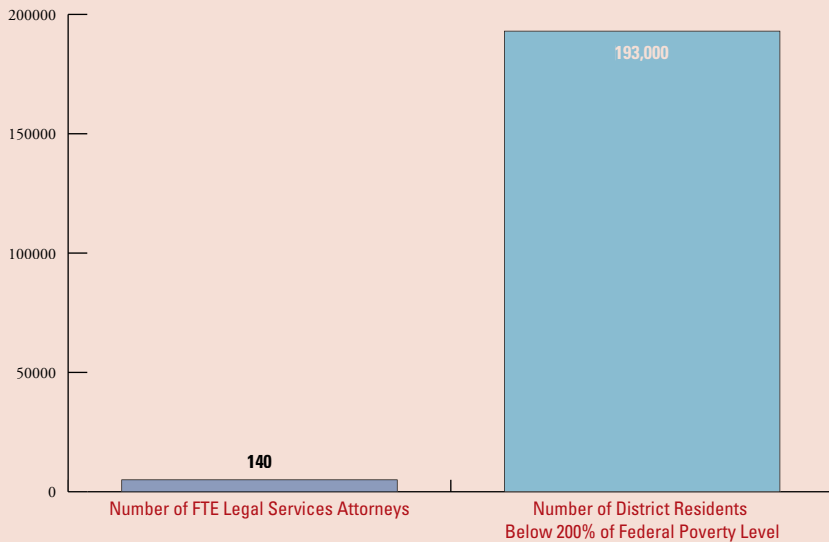
TOTAL FTE LEGAL SERVICES ATTORNEYS BROKEN DOWN BY SUBJECT AREA—2005*



* The figures for legal services attorneys do not include (1) FTE time spent serving non-District residents for organizations that also provide legal services in Maryland and Virginia and (2) FTE legal services attorneys working on cases where there is a right to counsel.

Chart No. 9

COMPARISON OF FTE ATTORNEYS WORKING FOR LEGAL SERVICES PROVIDERS AND DISTRICT RESIDENTS BELOW 200 PERCENT OF FEDERAL POVERTY LEVEL—2005*



* The figure for legal services attorneys does not include (1) FTE time spent serving non-District residents for organizations that also provide legal services in Maryland and Virginia and (2) FTE legal services attorneys working on cases where there is a right to counsel. The figures include the executive directors and other managers working for legal services organizations since almost all of them are attorneys.

to make available to their staff, but are unable to afford. Many training opportunities fall into this category. See Section VIII.G, *infra*.

7. PRO BONO

a. Introduction. The District is fortunate to have a culture that values and encourages pro bono work, both among attorneys and law students. Our city can also draw on a large pool of potential contributors—over 45,000 members of the DC Bar who work in the metropolitan area every day. In addition, the federal government has thousands of attorneys who need not be members of the DC Bar but who may take on pro

bono assignments from legal services providers. There are also six law schools in the District, which collectively have thousands of law students. Pro bono initiatives are spearheaded by many entities, including legal services providers, the courts, the DC Bar, voluntary bar associations, federal agencies, nonprofit organizations and the area law schools.

The large number of people doing pro bono work, coupled with the diversity of areas in which the work is done (*e.g.*, representing individual District residents in civil and criminal matters, pursuing national class actions, presenting for judicial

resolution major issues affecting civil, constitutional and economic rights, lobbying the federal and local government and advising and representing nonprofit organizations here and abroad) makes it extremely difficult to calculate the number of hours donated to District residents in civil cases. The DC Bar Pro Bono Program reported that, in 2005, 42 out of the 50 largest law firms in the District donated 604,929 hours of pro bono work.¹²⁷ While this figure includes all types of pro bono work (including work done for non-District residents and criminal work), it is also very under-inclusive because it counts only one segment of DC Bar members, those who work for 42 of the 50 largest law firms. However, although the total number of hours donated is difficult to calculate, there is little doubt that the DC Bar members' commitment to pro bono is unsurpassed nationwide.¹²⁸

This commitment to pro bono is emphasized in the DC Rules of Professional Conduct. Comments to Rule 6.1 recognize that “every lawyer, regardless of professional prominence or professional work load, should find time to participate in or otherwise support the provision of legal services to the disadvantaged.”¹²⁹ The comments also refer to resolutions passed by the Judicial Conferences of the District of Columbia and the DC Circuit that call on DC Bar members to, at a minimum, accept one court appointment, provide 50 hours of pro bono legal service or, when personal representation is not feasible, contribute the lesser of \$400 or 1 percent of earned income to a “legal assistance organization that services the

community's economically disadvantaged, including pro bono referral and appointment offices sponsored by the Bar and the courts."¹³⁰ Many lawyers have gone far beyond these minimum standards. Furthermore, the judicial leadership at both the federal and local level has been steadfast in their support of pro bono efforts over the years.

The District is also fortunate that over the last ten years or so, the federal government has made a concerted effort to increase the amount of pro bono work done by its lawyers. This effort began with the issuance of an Executive Order in 1996, which directed federal agencies to develop programs to facilitate pro bono legal services by government employees.¹³¹ Following the Executive Order, the federal government established a working group chaired by the Department of Justice (DOJ) to spearhead pro bono efforts in individual agencies. Increasing the commitment of government lawyers to pro bono service was one of DC Bar President John Cruden's initiatives in 2005-2006.

The District is fortunate to have a culture that values and encourages pro bono work, both among attorneys and law students.

b. Types of Assistance. There are many ways in which pro bono lawyers assist District residents. The largest single category of pro bono assistance involves representing individual clients. The cases cover each of the nine subject areas discussed in this report, and many others that are not covered. Pro bono cases come from three primary sources:

- Legal services providers.
- The DC Bar Pro Bono Program.¹³²
- Lawyers within a law firm or solo practitioners who hear about a matter.

The DC Courts also occasionally make pro bono appointments. In almost all of these cases, clients must meet financial eligibility requirements.

Aside from taking individual cases, pro bono lawyers undertake activities, such as:

- Developing and litigating systemic matters;
- Drafting and advocating for legislative or regulatory changes;
- Assisting with outreach and other public education efforts;
- Conducting initial client interviews, either in-person or over the telephone;
- Developing training manuals;
- Staffing community and court-based resource centers;
- Representing community-based nonprofits as their general counsel;
- Researching model programs in other jurisdictions; and
- Serving on boards of directors of legal services providers.

Several law firms provide legal services providers with loaned associates, who spend part or all of every week at the provider's office for a specified pe-

Mr. Smith had been paying the mortgage for the condominium home he shared with his wife before she died. After her death, Mr. Smith continued to pay the mortgage, but never probated his wife's estate or transferred the title to his name. When the mortgage was paid in full, Mr. Smith was unaware of his obligation to pay property taxes since the mortgage company had always paid the taxes from the escrow account and the tax bills came in the name of his wife. Mr. Smith then received a summons to appear in court.

The volunteer attorneys at the DC Bar Pro Bono Program's Tax Sale Resource Center accepted his case for representation and negotiated a settlement agreement allowing Mr. Smith to make the necessary payments over a reasonable time period. Mr. Smith was also referred to the DC Bar Pro Bono Program's Probate Resource Center, where he was assisted with probating his wife's estate, transferring title to his name and, ultimately, reducing his tax liability. Without this assistance, Mr. Smith's property likely would have been foreclosed and he would have lost his \$200,000 home because of a failure to pay \$2,000 in taxes.

riod of time. Retired lawyers also work as volunteer staff attorneys in several programs. Many of the largest law firms have partners or counsel who work full-time managing the firms' pro bono programs. These lawyers often serve as the bridge between the legal services providers and the firms.

Even with the vast amount of pro bono work that goes on in the District, there are opportunities to increase the pool of active pro bono lawyers. For instance, while attorneys working at larger law firms often have administrative support in their pro bono cases (*e.g.*, secretarial support, couriers, computers, printers, law library access and malpractice insurance), attorneys who do not work at law firms (*e.g.*, lawyers who work for the government, are retired or who are stay-at-home parents) may not have this support.¹³³ Even seemingly mundane tasks, like finalizing pleadings for filing or preparing courtesy copies, take time away from other work the lawyers could be doing. Fortunately, efforts to reach and utilize lawyers who need administrative support have already begun.¹³⁴

Law students also contribute to pro bono services. Legal services providers indicated that they utilize law students for legal research, legislative and policy advocacy, client intake and outreach campaigns. Students also work on non-legal issues, such as creating program newsletters. Through LSIC and other law school clinics, students provide full representation for clients under the supervision of an attorney. In addition, several law schools in the District encourage students to pledge a certain number of hours of law-related volunteer work before they graduate and give special recognition to those students who complete the pledge.

B. Private Attorneys

Private attorneys play an important role in providing legal services to low-income residents. The private attorneys generally fall into two categories. The first are attorneys who represent clients pro bono. The pro bono work of lawyers was discussed in the previous section and will be discussed further in Section VIII.D, *infra*. The second category is lawyers who accept payment from the government to represent low-income clients in certain cases. These cases usually occur where there is a statutory right to counsel. The government caps the fee that these court-appointed lawyers can charge. The right to counsel attaches when the government seeks to restrict or take away a person's constitutionally protected liberty interest. For example, in child abuse/neglect and termination of parental rights cases, the accused parent has a right to a lawyer because the parent faces the loss of his or her child. The government also pays for a *guardian ad litem* (GAL) to inform the court about the child's best interest.¹³⁵ In addition, children in juvenile delinquency cases are entitled to counsel.¹³⁶

A right to counsel also exists when the government seeks to commit someone to the Department of Mental Health so that the person can receive treatment that he or she has refused previously.¹³⁷ The cases arise when the government believes that a person is mentally ill, and, because of illness, is likely to injure someone if not committed.¹³⁸ The District's Public Defender Service (PDS) represents many of the people who the government is seeking to commit, but there are numerous other cases in which the court appoints a private attorney to represent such an individual. Since the government is almost always the plaintiff in these cases, and the respondent is entitled to counsel, both parties are almost always represented. *See* Appendix H.

In addition, individuals with developmental disabilities who are subject to judicial proceedings are entitled to counsel in certain situations.¹³⁹ Lawyers in private practice usually take these cases.

The DC Superior Court has established different registries for private attorneys seeking to represent people who have a right to counsel. The largest registry is kept by the Family Court's Counsel for Child Abuse and Neglect (CCAAN) office, which is responsible for recruiting, training and assessing the qualifications of private attorneys who are seeking court appointment in child welfare cases.

C. Government Agencies

Government agencies also assist District residents in civil cases. For instance:

- The Family Court has established a Self-Help Center where court employees (who are frequently assisted by pro bono lawyers and law students) give legal information and referrals. However, court employees are prohibited from providing legal assistance, and, therefore, cannot represent anyone.
- The OAG represents some petitioners in domestic violence cases and is responsible for enforcing many laws that protect the low-income community in areas such as consumer protection, child support and civil enforcement of regulations.
- PDS represents individuals facing civil commitment. Its other civil work includes special education matters and a range of cases involving the collateral consequences of a criminal arrest, conviction or incarceration.

D. Law School Clinical Programs

The District has six law schools, each with clinical programs in which law students represent clients under the supervision of professors or other attorneys. Like legal services providers, clinics collectively cover a range of subject areas, among them housing, tax and domestic violence. Populations served include women, children and the elderly. Clinics provide services such as individual representation, legislative advocacy, transactional work and administrative advocacy. Some clinics help staff court-based resource centers.

Law school clinics, however, are limited in their ability to serve large numbers of residents. They generally have a small case load because their primary mission is to educate students. As a result, a great deal of time is spent on each case. The clinics reported that the number one reason they turn away cases is because their case loads are full. Another common reason is that the requested assistance is outside of the clinic's expertise. It is particularly difficult to get services during the summer and other periods when students are out of school. For instance, the Small Claims Resource Center had to reduce the number of days it was open during the summer of 2007 because students were not available to staff it. Each clinic is relatively small, and most students do not work there full-time because they take other classes.

VI The Civil Legal Needs Confronting the Low-Income Community



This section discusses nine subject areas that form the core civil legal issues affecting low-income residents and others who face barriers in our civil justice system: consumer, education, employment, estate planning/wills/probate (hereinafter estate planning), family/juvenile/relational (hereinafter family), public benefits, health/disability, housing and immigration/asylum.¹⁴⁰

In an effort to illustrate the problems confronting low-income residents and the difference legal assistance can make in their lives, each subject area incorporates one or more stories obtained from the District's legal services providers. Each story is a true account of a civil legal problem faced by a provider's client and describes how the provider assisted or is continuing to assist the client in addressing it.

In reviewing these nine sections, there are several important things to keep in mind. First, each subsection is based, in large part, on information collected from legal services providers using 2005 and 2006 data. Where applicable, we have identified significant recent developments that may affect the data. For example, due to the funding received by the Council in fiscal year 2007, about seven more lawyers are working on housing issues in 2008 compared to 2005.

Second, there is a substantial degree of overlap among many subject areas. A case type that we categorized as falling within one subject area may just as easily be categorized within another. For example, SSI and Old-Age, Survivors and Disability Insurance (OASDI) matters could be viewed as either a public benefits or a health/disability issue; we have classified it as the former. Similarly, home repair disputes could be classified as a consumer or housing issue; we have classified it

as the former. *See* Appendix B, which is a copy of the survey, for a list of case types within each subject area.

Third, while each section illustrates the breadth of civil legal needs in the low-income population, it does not purport to be comprehensive. A complete catalog of every case type for which low-income residents have needed or might need assistance is beyond the scope of this report. Rather, it aims to describe some of the more common legal needs.

Fourth, it is likely that our survey and data collection methodology significantly understates the magnitude of the need. One significant limitation we encountered is that the study mainly looks at residents who sought legal assistance for a given issue. As discussed earlier, many low-income persons are not aware of their rights and/or that legal services providers are available. For these reasons, they do not seek legal assistance and therefore their needs cannot be assessed easily. Furthermore, those providers that returned data collection forms reported that they were unable to collect data from every person, either because they lacked the staffing to do so or because the individual was unwilling to provide the requested information.

Fifth, many entities that participated in the survey and data collection identified various limitations on their ability to provide the requested information. Some providers did not maintain the data requested, did not keep it in the form requested or did not track requests for legal needs outside of their own areas. Therefore, many survey responses are based on best estimates, not hard numbers. Other providers noted the difficulty in estimating the number of people served in class actions or other cases with multiple plaintiffs.

Finally, the nine subject areas identified above do not comprise the complete universe of civil legal needs confronting the low-income community. In both the surveys and data collection forms, providers identified other case types that did not fall neatly within any of these areas. The most frequent other case types included prisoners' rights and personal injury.

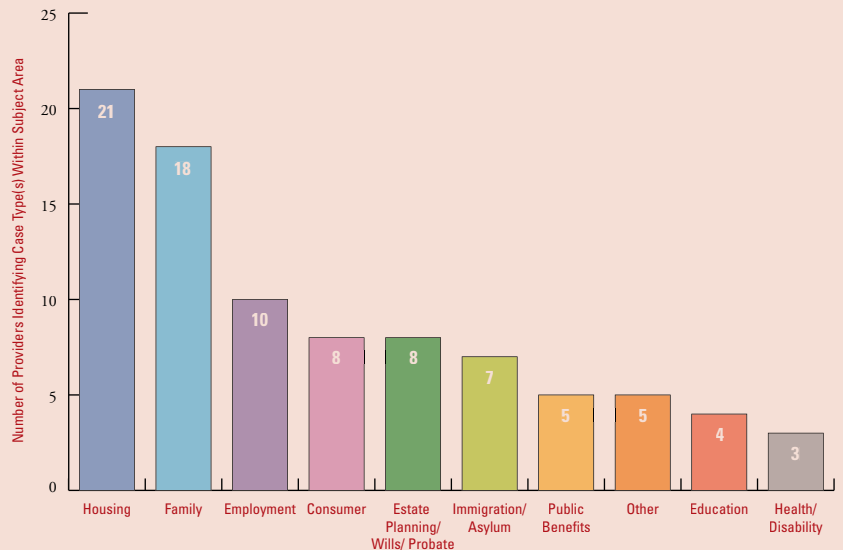
For these reasons, the Commission is not in a position to calculate the percentage of unmet need in any particular subject area or in the District as a whole. More qualitative conclusions, however, are possible. For example, while the need for civil legal services is substantial in each area, survey responses suggest that family and housing law are the two areas in which the need for civil legal services is the most apparent. In that regard, more providers:

- Identified housing, family and employment law as the areas that had the most under-addressed legal needs facing the low-income community, *see* Chart No. 10, "Most Under-addressed Legal Needs Facing Low-Income District Residents by Subject Area";
- Identified housing, family and immigration law as the areas where the need for civil legal services is most likely to increase in the near future; and
- Identified family, housing and consumer law as the areas in which they most frequently turned away requests for civil legal services in 2005, *see* Chart No. 11 "Subject Areas in Which Legal Services Providers Reported Most Often Turning Away Requests for Legal Services."

There is no subject area in which the legal services community is equipped to serve fully the outstanding demand for legal services, much less the need that may go unrecognized by the residents themselves.

Chart No. 10

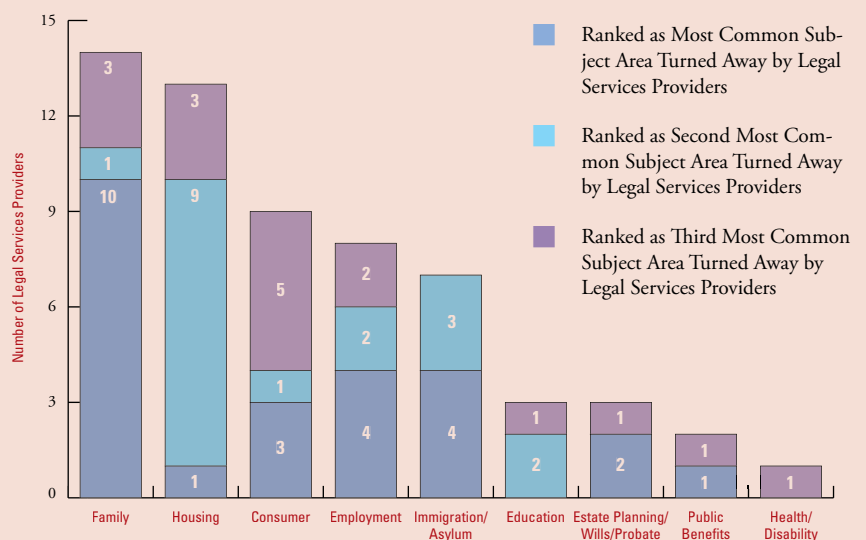
MOST UNDER-ADDRESSED LEGAL NEEDS FACING LOW-INCOME DISTRICT RESIDENTS BY SUBJECT AREA—2005*



* Based on the number of providers who identified case types within a given subject area when asked to rank the five most under-addressed legal needs facing low-income District residents

Chart No. 11

SUBJECT AREAS IN WHICH LEGAL SERVICES PROVIDERS REPORTED MOST OFTEN TURNING AWAY REQUESTS FOR LEGAL SERVICES



Spotlight on Data Collection Results

As mentioned in Section III, *supra*, we asked providers, court resource centers, government agencies and law school clinics to fill out a data collection form for each person who sought legal assistance (the respondent) over a one-month period. The information collected provides a rough snapshot of the legal needs landscape. It is not, however, complete. While over 2,000 forms were returned from 24 providers, some providers did not participate in the process and some were not able to participate fully. For example, some did not fill out forms for every person who sought legal assistance and some were not able to answer every question. As a result, even the large volume of legal need found during this one-month period significantly understates the magnitude of need.

The information gathered through the data collection forms indicates that District residents most frequently seek civil legal services in the areas of housing and family law. Of course, this conclusion may vary when looking at specific demographic groups. For example, data received in another form from the LCE indicates that people over 60 sought assistance most frequently in the areas of estate planning and housing.

In the order of magnitude of requests received, our data collection indicates that, after family and housing, District residents sought legal assistance in public benefits, consumer, employment, immigration/asylum, estate planning, prisoners' rights issues, health/disability and education. The case types for which residents sought assistance in each of these areas appears at Appendix G.

Our data collection generated other useful information about who is seeking legal assistance and how the legal services provider initially responded.

Persons Seeking Legal Assistance

- **Gender.** Just over 50 percent of the respondents were female. Men made more requests than women in only one subject area—immigration/asylum. Women made almost twice as many requests in the areas of consumer, education, housing and public benefits.
- **Race/Ethnicity.** Except in immigration/asylum issues, the majority of respondents in all case types were African American. African American residents comprise 77 percent of those living in poverty¹⁴¹ in the District and

accounted for roughly 75 percent of those who sought assistance. For immigration/asylum issues, the majority of persons seeking assistance were Hispanic. Hispanics also comprised approximately 20—25 percent of the persons seeking assistance in education and employment cases. Hispanics constitute about 8 percent of District residents living in poverty.¹⁴² White residents sought assistance in proportion to their poverty population. The only other demographic group which comprised at least 5 percent of the persons seeking assistance in a given area was Asian American residents, who comprised approximately 6 percent of the residents seeking assistance with immigration/asylum issues. Very few Asian Americans sought help in other subject areas.

- **Income.** Individuals with an annual household income below \$25,000 most often requested assistance from the legal services providers. People earning under \$10,000 requested assistance at a significantly higher rate than other income groups for disability and estate planning issues. For education, employment, family, housing and immigration/asylum issues, people with incomes under \$10,000, between \$10,001 and \$25,000 and between \$25,001 and \$40,000 each comprised approximately 20 percent or more of the persons seeking assistance.
- **Residency.** About 80 percent of requests were from District residents, with approximately 10 percent coming from Maryland and 2 percent coming from Virginia residents. Residents from every ward sought legal assistance, although almost 50 percent came from four zip codes which spread across Wards 4, 5, 6, 7 and 8.¹⁴³ See Chart No. 12, “Legal Assistance Requests by Zip Code.”

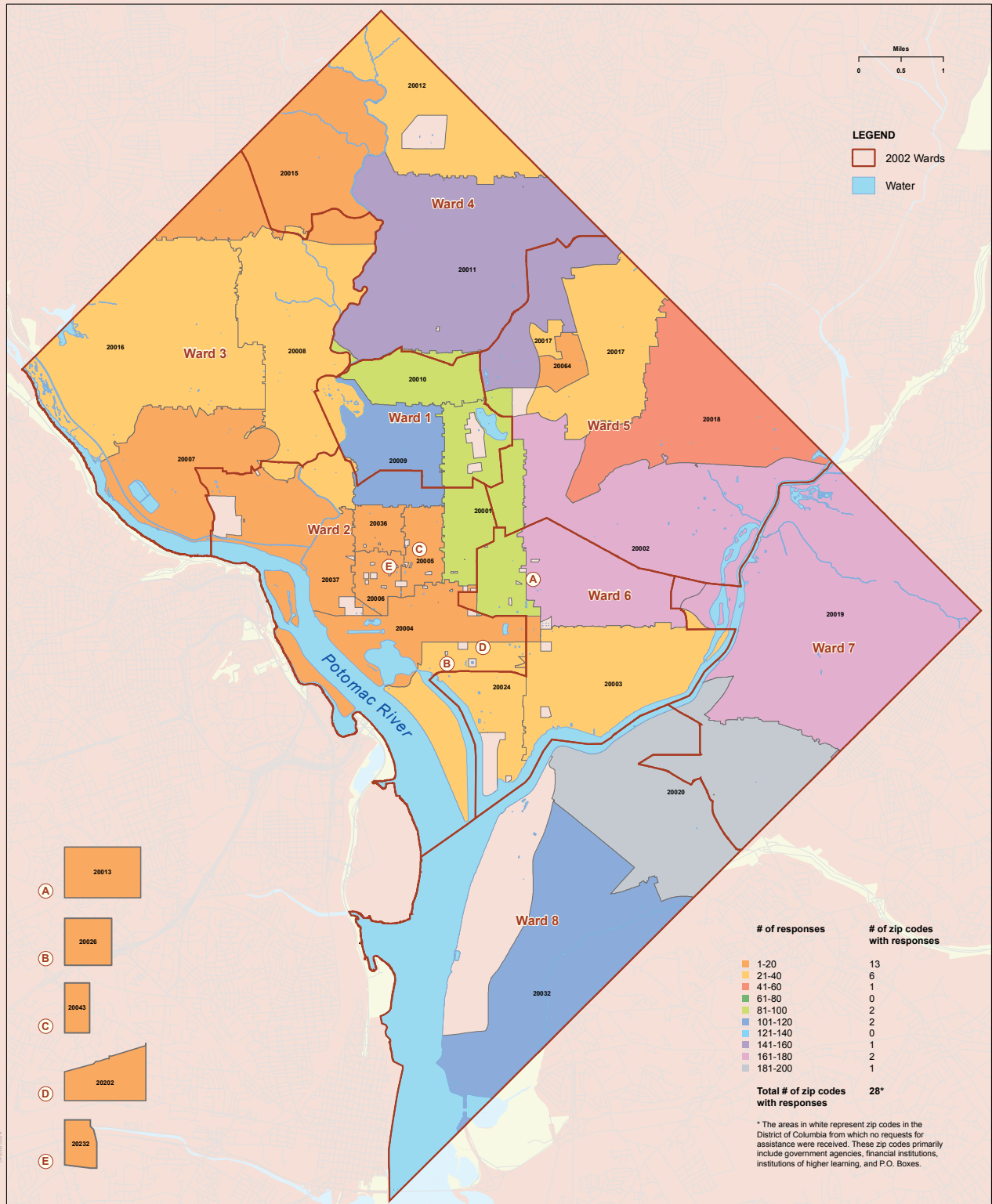
About 60 percent of respondents use public transport as their primary mean of transportation. About 30 percent of respondents drive, with much smaller percentages walking, bicycling or using other means of transport.

How Residents Hear About Available Legal Assistance

More respondents learned of the legal services provider from which they sought assistance through the court system than any other source. Significant percentages of respondents also learned of the provider through other legal services providers, social services agencies or religious resources, prior use

Chart No. 12

LEGAL ASSISTANCE REQUESTS BY ZIP CODE



Spotlight on Data Collection Results (cont.)

of the provider's services, and friends or relatives. Almost 5 percent of respondents heard of the provider through the Internet, while much smaller percentages became aware of the provider through the media, an advertisement or through District or federal government agencies.

Residents' Efforts to Get Legal Assistance

Only about one-third of the requests for legal assistance concerned pending cases or legal proceedings. This is a very interesting finding and runs counter to the notion that people seek assistance only after litigation has begun.

How Frequently Residents Sought Assistance

A number of residents who sought legal assistance had also sought legal assistance from the same or another source in the period since the one-month data collection effort began. This finding indicates that some people are not getting their needs addressed the first time around. This could occur for a variety of reasons—*e.g.*, they are pursuing a meritless case, they are dissatisfied with the first answer they received or the first legal services provider they consulted did not have the capacity or expertise to handle their problem.

Providers' Preliminary Response to Requests for Legal Assistance

Providers were asked to identify the preliminary response to requests for legal assistance. Full representation was provided in only a small percentage of cases; most residents seeking assistance received only brief advice or *pro se* assistance from the providers, either because this was all the client needed or it was all that the provider could offer.¹⁴⁴ After brief advice or *pro se* assistance, the most common response to a request for legal assistance was referral to other legal services providers, court resource centers or another attorney.

A. Consumer

A variety of consumer-related legal issues adversely affect the low-income community. With limited resources and sometimes bad credit ratings, people living in poverty are vulnerable to exploitation by unscrupulous lenders, merchants and scam artists. Unaddressed consumer issues can have far-reaching and devastating results, such as the loss of one's home. Despite these potentially serious consequences, few legal services providers are available to assist low-income residents in this area.

1. OVERVIEW OF THE ISSUES

The lack of bank accounts and traditional banking outlets, consumer fraud, bankruptcy, subprime mortgages and identity theft are only some of the significant problems that the low-income community confronts.

- a. **Scarcity of Financial Services.** The disproportionate lack of bank accounts among low-income and minority households is a significant consumer issue. The consequences of living without a bank account include high costs to get basic financial services and a lost opportunity to establish credit and build assets.¹⁴⁵ Those without bank accounts often turn to alternative financial services (AFS) providers that have much higher fees, such as check cashing outlets, pay-day lenders, tax preparation services that offer refund-anticipation loans, pawnshops and car-title lenders.¹⁴⁶ Payday lenders were exempt from the District's usury laws until the passage of the Payday Loan Consumer Protection Amendment Act in September 2007.¹⁴⁷ The Act repealed the usury exemption, so payday lenders now have a 24 percent interest rate cap under D.C. Code § 28-3301.¹⁴⁸ Previously, the cost of a two week payday loan could have been as much as 313 percent APR (for a \$1,000 loan) to 391 percent APR (for a \$100 loan).¹⁴⁹

While there may be many reasons that traditional financial services are often unavailable to the poor community, geographic access is one. In the District, banking outlets are not dispersed evenly throughout all neighborhoods.¹⁵⁰ The majority of banking outlets are in Wards 2 and 3, serving downtown and affluent residential areas.¹⁵¹ In contrast, AFS providers are disproportionately located in minority, low-income neighborhoods.¹⁵²

- b. **Deceptive Business Practices and Fraud.** The low-income population is also the target of deceptive business practices and fraud. One example is an emerging form of consumer fraud, known as equity stripping.¹⁵³ Equity stripping occurs when a home loan is made on the basis of the property's equity, rather than the borrower's ability to repay the loan.¹⁵⁴ The homeowner may be offered an opportunity to refinance for a slightly lower rate, but the loan term is then extended, increasing the total cost of the loan.¹⁵⁵

Consumer fraud unrelated to home ownership is another prevalent problem. The Washington-Arlington-Alexandria region had the highest number of fraud-related consumer complaints out of 50 major metropolitan areas for 2005.¹⁵⁶ Foreign money offers, Internet auctions, Internet services and computer complaints, prizes/sweepstakes and lotteries, and shop-at-home/catalog sales were the top five fraud complaint categories in the District.¹⁵⁷ District consumers reported fraud losses of \$1.29 million in 2005.¹⁵⁸

Consumer fraud issues include life and burial insurance scams.¹⁵⁹ Low-income people may be persuaded to purchase life insurance policies with

Legal Counsel for the Elderly (LCE) successfully represented Ms. Jones, an elderly District resident, in a lawsuit against an unscrupulous contractor with a long history of fraud and deception against unsuspecting home owners.

The contractor, originally hired to completely renovate the basement, attempted only 20 percent of the "improvements" to the basement. The minimal work that was performed fell below the most basic requirements of the District's building code. Ms. Jones, who is disabled and has lived in her house since the 1950s, had taken out a reverse mortgage to complete the renovations so she could offer the renovated basement as a rental unit to supplement her limited income.

In 2006, following repeated efforts to get the contractor to complete the services he had been paid to do, Ms. Jones called the LCE "Legal Hotline" seeking assistance. LCE ultimately sued the contractor to force him to return the client's funds.

After months of negotiation, the contractor agreed to settle the matter by fixing Ms. Jones's house and paying for a comprehensive home inspection before and after the work. After months of stalling, however, the contractor declared that he would not fix Ms. Jones's home.

LCE promptly reinstated the lawsuit. The result: a ruling from the DC Superior Court in October 2007 that awarded Ms. Jones \$228,000 in money damages, plus related attorneys' fees and the possibility of an additional award of punitive damages due to the egregious nature of the contractor's misconduct.

payoff amounts that are small compared to the high monthly premiums.¹⁶⁰ At these premiums, the face amount of the life insurance is paid within a few years, yet the purchaser is often unaware of that fact and continues to make payments.¹⁶¹ Similar burial insurance schemes are commonly marketed in the low-income community.¹⁶²

- c. **Bankruptcy.** Bankruptcy raises many complex and competing consumer-related considerations for the low-income population. In 2005, 2,432 bankruptcy petitions were filed in the District,¹⁶³ which was a 25.8 percent increase from 2004.¹⁶⁴ Of these 2,432 petitions, non-business filings comprised 98 percent of the total.¹⁶⁵ A significant portion of the area's bankruptcy petitions are filed *pro se*.¹⁶⁶

To address the bankruptcy needs of litigants, including those of *pro se* litigants, the Bankruptcy Task Force of the DC Circuit Judicial Conference Standing Committee on Pro Bono Legal Services (the Bankruptcy Task Force) was created and first convened in January 2006.¹⁶⁷ It was designed to consider options for solving the growing problem of *pro se* litigants in the Bankruptcy Court. Since its inception, the Bankruptcy Task Force has created the Bankruptcy Pro Bono Panel, comprised of lawyers willing to accept pro bono appointments to represent qualified litigants in contested matters.

For some, bankruptcy offers an opportunity for a fresh start, while for others the process is fraught with risks. For example, some providers have stressed the need for bankruptcy law reforms to ensure that many low-income homeowners struggling with abusive lending practices do not lose their homes due to laws favoring home mortgage lenders over other creditors.¹⁶⁸ This area of law is also in need of individual representation. Legal advice may provide residents with alternatives to bankruptcy filings, such as contesting collection claims with valid legal defenses. While steps are being taken to address the needs in this area, further improvements are needed.

- d. **Subprime Mortgages.** Subprime mortgages are yet another significant issue for the low-income community and one that has received much press coverage recently. These loans are designed for applicants with poor credit histories, high loan-to-home value ratios or other credit risk characteristics that would disqualify them from prime-rate loans.¹⁶⁹ In theory, these loans should bring or keep homeownership within the reach of those who could not otherwise afford it. In practice, abuses are frequent.¹⁷⁰

To compensate for the greater risk of default, subprime loans carry higher fees and interest rates than traditional loans. Because these loans target customers with few financing options, they may be predatory and carry excessive and unjustifiable fees, penalties or loan terms.¹⁷¹ Subprime lending practices also may involve inappropriate marketing strategies and a failure to disclose loan terms fully.¹⁷² Borrowers from minority groups may be steered inappropriately to subprime loans, in violation of fair housing laws.¹⁷³ These practices can have a devastating impact on low-income homeowners, resulting in foreclosure and the loss of substantial home equity. The Center for Responsible Lending estimated that predatory loans stripped District families of \$24.9 million in home equity in 2001.¹⁷⁴ For the Washington metropolitan area, the Center for Responsible Lending is projecting a 22.8 percent foreclosure rate for subprime loans originated in 2006.¹⁷⁵

Not surprisingly, the District's poorest wards have the greatest level of subprime lending activity.¹⁷⁶ In 2003, home buyers in Wards 5, 7 and 8 were almost ten times more likely to receive a home purchase loan from a subprime lender than those in Ward 3.¹⁷⁷ Furthermore, African American and Hispanic home buyers were five times more likely to receive a mortgage loan from a subprime lender than white home buyers.¹⁷⁸

- e. **Identity Theft.** The Washington-Arlington-Alexandria region ranked 16 out of 50 major metropolitan areas in identity theft-related consumer complaints in 2005.¹⁷⁹ In 2002, the FTC received complaints from 704 District residents who were victims of identity theft.¹⁸⁰ This positioned the District as the jurisdiction with the highest per capita rate of identity theft per 100,000 residents in the nation.¹⁸¹

2. THE EXTENT OF THE LEGAL NEED

The need for consumer-related legal services is as great as the issues are varied. Although no provider ranked consumer law as the top subject area in which requests for legal assistance were received in 2005, five providers ranked consumer law among the top four subject areas. *See* Chart No. 13, "Subject Areas in Which Legal Services Providers Reported Receiving the Most Requests for Legal Assistance."

We asked providers to list the top two case types for which requests were received. Bankruptcy/debt collection had the most requests. In addition, utility terminations, small claims and contract/warranty matters were listed by at least two providers. Further, consumer law was ranked by nine providers as one of the top three subject areas in

which requests for legal services were turned away most frequently. Three providers indicated that they turned away consumer cases more than any other subject area. *See* Chart No. 11. Both bankruptcy/debt collection and predatory lending were also identified as case types for which requests were repeatedly turned away and which providers see as one of the most unaddressed areas of need.

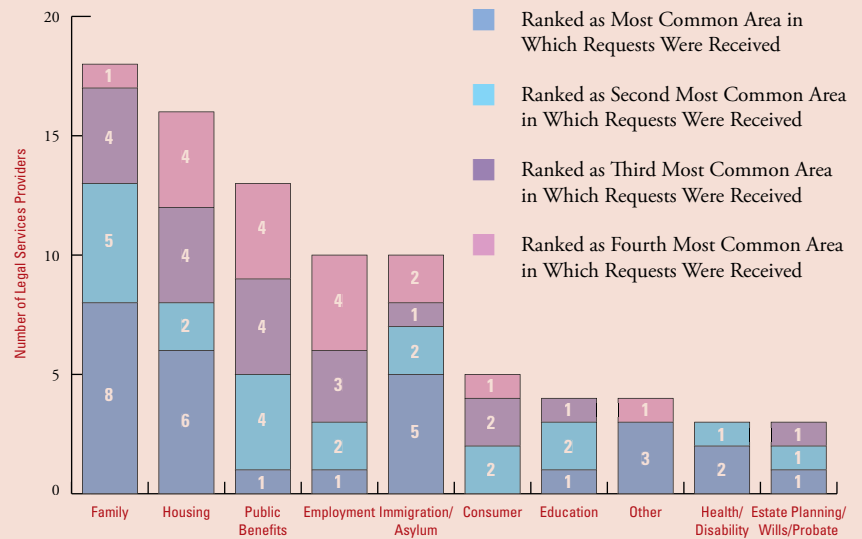
While eight providers identified consumer issues in their list of the top five most under-addressed legal needs, four of these providers identified a consumer issue as *the* most under-addressed legal need. *See* Chart No. 10.¹⁸² In doing so, several providers noted that there is little to no assistance available in this area. Another noted that no member of the low-income community can avoid consumer issues. Several also indicated that they expect an increase in the need for consumer-related legal services, such as debt and bankruptcy litigation over the next two years.

The extent of the need for consumer-related legal services was reiterated in the DC Bar Foundation listening sessions and in interviews conducted with community-based organizations. In a listening session with legal services line attorneys, consumer debt, bankruptcy and financial services were named as three out of the five areas where there is a gap in legal services. Additionally, in interviews with community-based organizations, consumer-related legal issues were frequently mentioned. These organizations reported that those who are LEP and/or elderly have the greatest need. Predatory lending, particularly with mortgages and refinancing, was another consumer legal need identified in the interviews.

In stark contrast to the level of need, legal services providers are able to devote only very limited resources to this area. For example, there were

Chart No. 13

SUBJECT AREAS IN WHICH LEGAL SERVICES PROVIDERS REPORTED RECEIVING THE MOST REQUESTS FOR LEGAL ASSISTANCE



only approximately five FTE legal services lawyers working on consumer law issues in 2005. Moreover, the gap in services for some types of consumer cases cannot be filled easily by pro bono lawyers from most large firms. Participants in the listening sessions noted that conflicts of interest often bar placement of financial services cases with those firms.

As with all subject areas, simply comparing the magnitude of consumer law requests with the number of providers that work on these types of cases underestimates the severity of the need. This is particularly true in consumer law for several reasons. First, many consumer issues—such as predatory lending—are not easily recognizable as a legal problem. In that regard, it is not surprising that the top consumer case type for which providers received requests for assistance was

bankruptcy/debt collection matters as it involves an identified adversary and/or legal process. These circumstances may help people recognize that legal assistance may be necessary. Consumer exploitation or other forms of economic injustice are more nebulous and it is far less likely that their victims may recognize the need for legal assistance.

Similarly, many consumer issues cannot be remedied by traditional forms of one-on-one representation. Rather, they are systemic problems that require a comprehensive strategy and the resources to carry it out. For example, in trying to tackle “some of the most serious disadvantages that poor consumers face in obtaining financial products and services,” the OAG introduced a series of initiatives in 2007, including holding town hall meetings, preparing new consumer

Ms. Edwards and her son, Brian, sought help from the Advocates for Justice and Education (AJE). Ms. Edwards kept getting calls from her son asking to be picked up at high school because he had been suspended. Brian has a learning disorder and has had several run-ins with school administrators. Ms. Edwards was worried that her son was missing educational opportunities because of his frequent suspensions. Under the law, parents are to receive notification of the suspension by certified mail within 24 hours of the incident. Ms. Edwards never received a phone call from the school about a suspension, nor did she receive a certified letter. In addition, the high school did not report these suspensions to truancy officers. Therefore, when Brian was suspended without any written notification and decided to hang out in his neighborhood, he was picked up for being truant.

Under the special education laws, a student with a disability cannot be suspended for more than ten days without determining whether the behavior was a manifestation of the disability. AJE explained to Ms. Edwards that the high school must follow procedures regarding suspensions, including the requirement that there be a determination whether the behavior is a manifestation of the disability. AJE also went through the school's disciplinary code with her.

Ms. Edwards immediately became more confident. After receiving her copy of the disciplinary code and a summary of her child's special education rights, Ms. Edwards has been able to challenge the school when necessary. Oftentimes, school administrators are unfamiliar with the disciplinary code, but Ms. Edwards is right there showing them the language and rules.

Most importantly, having those manifestation meetings helps school administrators understand Brian's unique needs and how his disability plays a role in the decisions he makes. The meetings allow the parent, student and school to sit together, talk about the issues and come up with proactive solutions instead of reactive suspensions. The suspensions have decreased as a result.

protection legislation, increasing investigation and prosecution of predatory mortgage lending and foreclosure rescue scams and improving consumer education.¹⁸³ Demonstrating the importance of a broad-based, multi-faceted strategy, these initiatives will be pursued in cooperation with the Council, the Department of Insurance, Securities and Banking, the Department of Consumer and Regulatory Affairs's (DCRA) Office of Consumer Protection, LCE and the Urban Institute.

While the OAG's decision to undertake such initiatives is significant, it is obviously not a complete remedy. There are many complicated consumer issues confronting the low-income community that require legislative advocacy, community outreach and vigorous monitoring and enforcement of the laws. Such efforts require substantial resources that the legal services network is not equipped to provide. Several providers noted that they would engage in class action work or other forms of systemic advocacy if they had the resources to do so.

That being said, some providers are currently undertaking training and outreach efforts in the consumer arena. LCE's Consumer and Financial Abuse Unit conducts trainings on real property title fraud, predatory lending or foreclosure rescue schemes for attorneys in seminars and at national conferences. The Consumer and Financial Abuse Unit staff attorneys also present information to community-based organizations and the media to educate the public about consumer rights and potential fraud.

B. Education

1. OVERVIEW OF THE ISSUES

The District had 76,876 public school students in 2005-2006.¹⁸⁴ Over 17,000 of these students were enrolled

in public charter schools.¹⁸⁵ The rest enroll in the District of Columbia Public School system (DCPS).

The estimated high school graduation rate for students (including those attending charter schools) in 2006-2007 is only 58 percent.¹⁸⁶ Over 2,000 students from the class of 2007 were expected to drop out.¹⁸⁷ The consequences are severe. The lost lifetime earnings in the District for dropouts from the class of 2007 alone total more than \$614 million.¹⁸⁸ The city would save almost \$20 million in health care costs over the course of the lifetimes of each class of dropouts had they earned diplomas.¹⁸⁹ The futures of the students who drop out are also at risk. Nationally, dropouts comprise 75 percent of state prison inmates and are 3.5 times more likely than high school graduates to be incarcerated in their lifetime.¹⁹⁰

DCPS, which enrolls about 75 percent of public school students, has a history of problems, including (but certainly not limited to) a lack of school security and an overwhelmed special education system.¹⁹¹ Over 50 percent of teenage students attend schools that meet the District's definition of "persistently dangerous" because of the number of violent crimes on campus.¹⁹² The District's Office of Inspector General (OIG) determined that DCPS failed to establish a comprehensive reporting system to efficiently and accurately manage the reported incidents.¹⁹³

DCPS's special education system is of particular concern to legal services providers. In 2004-2005, nearly 19 percent of DCPS students were identified as disabled.¹⁹⁴ This figure is up from 11.4 percent in 1999.¹⁹⁵ The system is ill-equipped to handle the large number of children who are disabled, and all children suffer as a result.¹⁹⁶ In fiscal year 2008, the District will spend about \$137 million to send about 2,300 special education students to private schools because the public schools cannot meet their needs, and \$81 million in transporting these students.¹⁹⁷ Special education spending is about 28 percent of the DCPS budget.¹⁹⁸

Failing to accommodate children needing special education services has tremendous consequences. Nationally, approximately 90 percent of youth in corrections facilities meet the criteria for one or more mental health disorders and a majority in the juvenile delinquency system have education-specific disabilities.¹⁹⁹ This is partly the result of failing to identify children with disabilities, and, even for students identified as disabled, the schools' inability to deliver appropriate special education services.²⁰⁰

Minority and low-income children are disproportionately affected by the system's problems. The District's schools are 83.6 percent African American, 9.7 percent Hispanic, 4.9 percent White, and 1.8 percent Other.²⁰¹ Approximately 69 percent of the students were eligible for free or reduced priced lunches in 2004-2005,²⁰² an increase from approxi-

mately 59 percent in 1999-2000.²⁰³ Nearly 45 percent of the students live east of the Anacostia River, while less than 5 percent live west of Rock Creek Park.²⁰⁴ The school system's problems are a significant factor in other issues, including the departure of middle class households with children from the District.²⁰⁵ Given the importance of education and its role in moving people up the economic ladder, these problems are particularly troubling.

Over the years, advocacy groups in the District have challenged the school system to improve its performance. These groups have litigated some of these problems to bring about improvements, but there have been few litigation strategies available to challenge its overall performance.²⁰⁶

In an effort to provide a comprehensive remedy, Mayor Adrian Fenty proposed the District of Columbia Public Education Reform Amendment Act soon after taking office. Under the Act, the mayor would be in charge of the school system and the school system's chancellor would report to him. The plan was approved by the Council and Congress in the summer of 2007. Mayor Fenty said that the key advantages of mayoral control are an accelerated pace of reform, direct accountability for management and increased stability in leadership.²⁰⁷ The Act creates a Department of Education that reports directly to the mayor at the cabinet level. The Department of Education provides facilitation, coordination and direction for pre-kindergarten through post-secondary education initiatives. Efforts by the mayor and chancellor to improve the DC schools in a number of areas, including special education, have been widely reported in the media.²⁰⁸ Many in the community are watching closely to see if lasting improvements can be made.

2. EXTENT OF THE LEGAL NEED

Our survey asked legal services providers to identify the subject areas for which legal services were most frequently requested. Although education was not a subject area that was mentioned as frequently as some other areas (*e.g.*, family and housing), it was at or near the top of the list for several providers. One provider that specializes in education ranked it as the subject area for which legal services were most frequently requested. Three other providers ranked education in the top four subject areas in which they receive the most requests for legal services.

When asked to identify the two types of education cases for which they received the most requests, almost all of the providers giving responses identified special education. More than one provider also identified disciplinary proceedings and school transfers/access to education. Four of the legal services providers identified education issues as being among the five most under-addressed legal needs confronting low-income District residents.

The story of Mr. Miller illustrates the challenges facing workers who are limited English proficient. Mr. Miller, a native Spanish speaker, applied for unemployment insurance benefits (UI) at the DC Department of Employment Services (DOES). Mr. Miller requested assistance in Spanish and a bilingual DOES worker helped him complete the UI application. That was the first and last time Mr. Miller received assistance in Spanish. Although DOES approved Mr. Miller's application for UI, his case was assigned to a DOES caseworker who did not speak Spanish.

Later, Mr. Miller received a confusing telephone call in English from DOES.

Mr. Miller attempted to contact his caseworker several times, but she was on vacation. Mr. Miller then received a letter in English from DOES informing him that his benefits were being terminated.

By the time Mr. Miller sought help from the DC Employment Justice Center's Workers' Rights Clinic, the deadline for appeal had passed. Mr. Miller tried to submit the appeal in person to DOES. They told him he was at the wrong unemployment office, and they would not accept the appeal.

After six weeks of not receiving UI checks, DOES told Mr. Miller that he could reapply for benefits again. Afraid he would not receive assistance in Spanish,

Mr. Miller brought an English-speaking friend with him to DOES, and the friend assisted him in applying for benefits. Although ultimately reapproved, Mr. Miller found it frustrating that claimants must apply over the computer—Mr. Miller does not have his own computer, and he finds it difficult to use them.

After receiving a few UI checks, DOES cut off Mr. Miller's benefits for four more weeks. He does not know why, and DOES failed to explain the reasons for the termination. Undeterred, Mr. Miller went back to DOES and reapplied for benefits. Thankfully, he has been approved.

Several legal services providers reported that they had to turn away requests for services in the education area. Three providers ranked education in the top three subject areas for which requests for legal services were turned away.

There are only about five FTE legal services attorneys focusing on education issues. Despite this relatively small number, providers reported that about 480 District residents received full representation in education-related cases—ranking it in third place on the list of areas of law for which the most residents received full representation. The number is comprised almost entirely of reports from two providers, both of which focus on education issues. Special education administrative hearings and school discipline matters comprised the vast majority of these cases.

Some members of the private bar handle special education cases since they can recover attorneys' fees if they are successful. However, providers have observed that the statutory cap on the attorneys' fees payable in a particular case has greatly reduced the incentive for private attorneys to take these cases.²⁰⁹ PDS also handles special education cases for some students in the delinquency or neglect system.

In addition to representing residents in individual matters, there is a need to advocate for systemic change in the education system. As indicated by our survey, a balance must be found between community organizing and advocacy on the one hand and individual representation on the other. In particular, the District's special education system needs to be reformed. Developing the capacity for

effective advocacy with government agencies (not in terms of litigation, but rather in terms of policy) is also critical. Legal services providers consistently cited a lack of funding as a reason why they cannot undertake more broad-based initiatives that would address systemic education issues.

C. Employment

The District's low-wage workers have a substantial need for employment law assistance. This need is due to, among other things, a highly competitive low skill/wage job market, unstable employment, a high illiteracy rate and a large immigrant population. Immigrants and people with literacy issues are particularly vulnerable to unfair employment practices because they may not be aware of their legal rights.²¹⁰

The effects of an unresolved employment problem can be devastating. The loss of a steady income can have a ripple effect throughout low-income households, compounding the need for assistance with housing, consumer, public benefits and other issues.

1. OVERVIEW OF THE ISSUES

- a. **Unemployment and Earnings Among the District's Low-Income Communities.** According to the District's Department of Employment Services (DOES), at the end of 2005, the District's seasonally adjusted unemployment rate was 6 percent, compared to 4.9 percent

nationally.²¹¹ Unemployment levels vary across the city, with the highest rates in Wards 5, 7 and 8.²¹² The rates also vary among racial and ethnic groups. For example, African American residents are five times more likely than white residents to be unemployed.²¹³ This gap is at its widest level in 20 years.²¹⁴ The Hispanic unemployment rate in 2004 was 7.4 percent.²¹⁵ Significantly, these unemployment rates, which utilize the Department of Labor (DOL) definition of unemployment, do not present a complete picture because the definition excludes several categories of workers. The DOL does not include persons under 16 years of age, inmates of institutions, persons on active duty in the Armed Forces, part-time workers who would like to work full-time but are not able to do so, disabled individuals who are able to work, individuals who retired early, workers who are in moderately subsidized jobs through the Earned Income Tax Credit, “marginally attached” individuals or “discouraged workers.”²¹⁶ The unemployment situation becomes bleaker when these additional categories of workers are included.²¹⁷

There is a correlation between high unemployment rates and low levels of educational attainment.²¹⁸ In the District, many moderate- to high-paying jobs require an educated workforce.²¹⁹ While businesses such as hotels, restaurants and hospitals provide employment opportunities for those without college degrees, many of these jobs are relatively low paying, do not have well-established career ladders leading to higher-paid positions or do not offer benefits such as health insurance.²²⁰ Additionally, employment among city residents who have a high school diploma is at the lowest level in nearly 30 years.²²¹

The wages earned by many employees are not adequate to meet the city’s high cost of living.²²² Real earnings for low-wage²²³ District workers rose just 6 percent between 1979 and 2006, compared with a 40 percent increase for high-wage workers.²²⁴ The gap between earnings and the cost of basic needs is wider in the District than nearly every other major city.²²⁵

b. Employment-Related Legal Issues Facing District

Residents. Low-income employees in the District face a multitude of employment-related legal problems, including wage and hour disputes, discrimination in employment and termination, workers’ compensation issues, domestic violence-related employment issues and unemployment insurance issues.

i. Wage and Hour Issues

Workers in the District have certain basic protections under the wage and hour laws. For example, the

District requires employers to pay workers a minimum of \$7 per hour and time-and-a-half for hours worked in excess of a 40-hour week.²²⁶

Employers, however, may take advantage of employees that are not aware of these protections. Nationally, the abuse of wage and hour laws is particularly prevalent among employers of those working in service jobs.²²⁷ Some employers pay a flat weekly wage, regardless of hours worked; misclassify their workers as independent contractors to evade labor law wage and hour requirements; or use labor intermediary subcontractors, such as temporary work agencies to avoid their legal responsibilities.²²⁸ The Employer Policy Foundation estimated that, nationally, workers would receive an additional \$19 billion annually if employers obeyed workplace laws.²²⁹

ii. Discrimination in Employment and Termination

Under both District and federal law, it is illegal for an employer to discriminate on the basis of race, color, national origin, sex, religion, pregnancy, age or disability.²³⁰ In addition, District law prohibits discrimination based on marital status, personal appearance, sexual orientation, family responsibility, political affiliation or enrollment in college or vocational school.²³¹ Discriminatory practices can include bias in hiring, promotion, job assignment, termination, compensation and various types of harassment.²³²

Low-income workers experiencing employment discrimination face a litany of barriers to justice.²³³ The high cost of litigation and the need for a victim to take time off from work to pursue a claim in court are both substantial obstacles.²³⁴ Further, the potential recovery for low-income employees may not be large enough for a plaintiff’s lawyer to agree to bring a claim on a contingency-fee basis.²³⁵

Moreover, low-income employees are often not aware of the protections afforded to them under the employment discrimination laws and, therefore, may not seek remedies where they may be entitled to them.²³⁶ Or, if they are aware of their rights, they are unaware of the procedural hurdles that must be met to enforce them. The U.S. Equal Employment Opportunity Commission (EEOC), which enforces the federal job discrimination laws, has strict time limits within which charges of employment discrimination must be filed.²³⁷

Cultural barriers, language barriers, or unfamiliarity with the legal system may also make it difficult for low-income employees to navigate the justice system effectively.²³⁸ Further, employees may not want to bring claims against their employers for fear of losing

their jobs.²³⁹ Fear of job loss is likely more salient for low-income workers, as they have fewer job opportunities.²⁴⁰ Finally, many low-income individuals have given up faith in a justice system that has let them, their families or their communities down.²⁴¹

iii. Workers' Compensation

There are separate workers' compensation programs for District government employees and private sector employees. The Office of Risk Management (ORM),²⁴² which is a part of DOES, is responsible for administering the Disability Compensation Program (DCP) for District government employees. District government workers report a variety of difficulties navigating the DCP.²⁴³ An OIG 2002 performance review of DOES identified several other problems with the DCP.²⁴⁴

As a result of these difficulties, the EJC and a group of current and former District employees began a campaign to reform the DCP, leading to the passage of the Disability Compensation Effective Administration Amendment Act of 2004 (DCEAA)²⁴⁵ and the District Government Injured Employee Protection Act of 2005 (IEPA).²⁴⁶ The DCEAA provides that, if the government does not act on a worker's claim within 90 days, the worker is deemed automatically accepted into the workers' compensation system. The IEPA imposes financial penalties when the government is not in compliance with the DCEAA and provides for attorneys' fees when a claimant successfully appeals a benefits determination.

Despite these legislative efforts, workers' compensation problems remain. In April 2007, the OIG conducted an audit of the DCP in response to complaints alleging inappropriate management practices.²⁴⁷ The audit revealed that ORM and the third-party administrator of the program terminated claimants' life and health insurance benefits without notifying claimants, failed to provide claimants with records of the benefit premiums paid, and did not respond to requests for reconsideration of benefits determinations within 30 days, as is required.

DOES's Office of Workers' Compensation (OWC) processes claims and monitors the payment of benefits to injured private-sector employees in the District.²⁴⁸ OWC is charged with mediating disputes between claimants and employers or insurance carriers, monitoring employers to ensure compliance with insurance coverage requirements, assessing penalties and fines for non-compliance, approving lump-sum settlements, monitoring vocational rehabilitation and administering the special/second injury fund, which provides ben-

efits for uninsured employees or in instances where an injury combines with a pre-existing disability to cause a substantially greater disability.²⁴⁹

In 2007, the OIG evaluated the timeliness and impartiality of DOES's processes for resolving disputed private sector workers' compensation claims.²⁵⁰ The OIG found that DOES's efforts to resolve these claims in a timely and fair way have been negatively affected by:

- staffing shortages that have caused delays;
- inconsistencies in the way disputed claims are processed;
- inadequate resources;
- supervisors who are not available to provide assistance; and
- ineffective case tracking systems.²⁵¹

OIG also found a significant backlog of unresolved cases in the Administrative Hearings Division of DOES, some with decisions more than a year late.²⁵²

iv. Domestic Violence-Related Employment Issues

Domestic violence victims experience difficulties in finding and maintaining employment for several reasons. Abusers may stalk their victims or create public disturbances at the victim's place of employment.²⁵³ Some victims may be forced to quit their jobs because they work with their abusers or because it is the one place where the abusers know they can consistently find the victim.²⁵⁴ Victims may have to miss work due to injuries caused by domestic violence, or may take time off to seek medical care, speak with law enforcement, attend judicial proceedings, find shelter and address mental health issues.²⁵⁵ In certain situations, employers fire employees who are victims of domestic violence just because they are victims.²⁵⁶ Employers may also fire victims if they believe they are taking excessive time off from work.²⁵⁷

Employment laws may be triggered when domestic violence issues come into the workplace.²⁵⁸ Under the federal and DC Family and Medical Leave Acts²⁵⁹ and the DC Human Rights Act,²⁶⁰ certain employees may take job-protected leave for a serious health condition.²⁶¹ Disability laws, such as the Americans with Disabilities Act and the general duty clause of the Occupational Safety and Health Act, which requires employers to provide a safe working environment, may also be implicated in workplace violence situations.²⁶²

However, only certain employers are covered under these Acts and many victims are not aware of even these protections.²⁶³ As a result, they cannot or do not take advantage of such job-protected leave.²⁶⁴ Legislative advocacy in favor of enhanced protection for domes-

tic violence victims is needed.²⁶⁵ Some states already specifically prohibit employers from taking adverse employment action against an individual based solely upon status as a domestic violence victim.²⁶⁶ Also, outreach and education efforts can lead to increased awareness and utilization of the protections available.²⁶⁷

Women who are fired or forced to quit as a consequence of being a victim of violence have a significant need for counsel. Invoking the protections of the DC Human Rights Act and the unemployment system means a long-term commitment to a complex adversarial process. A victim who is concerned for her safety and is dealing with lost income will experience heightened barriers to navigating administrative tribunals and eventually the courts.

v. Unemployment Insurance Compensation

The 50 states, the District of Columbia, Puerto Rico and the Virgin Islands each administer and finance their own unemployment insurance (UI) program in compliance with the Social Security Act of 1935.²⁶⁸ In the District, the Unemployment Compensation Act provides for the establishment of an Unemployment Compensation Fund financed by contributions from employers and serves as a source of payments to eligible individuals.²⁶⁹ DOES administers the UI program.

The goal of UI is to provide income support for a period of unemployment and insurance against the risk of job loss.²⁷⁰ The District's UI program replaces less than 25 percent of average earnings, which places the District last among the 50 states, the District of Columbia, Puerto Rico and the Virgin Islands.²⁷¹

Pursuant to the Office of Administrative Hearings Establishment Act, OAH adjudicates appeals from DOES unemployment insurance determinations.²⁷² Therefore, employees challenging a DOES unemployment compensation eligibility decision must appeal to OAH. The failure to comply with certain procedural rules has resulted in the dismissal of some appeals. Some of these decisions have later been reversed by the DC Court of Appeals.²⁷³

2. THE EXTENT OF THE LEGAL NEED

District legal services providers have witnessed a substantial need for employment-related legal assistance in terms of the number of requests received, the number of requests turned away and providers' general perception of the need. For instance:

- Although only one provider reported receiving more requests for employment related assistance in 2005 than any other area, ten providers identified employ-

ment as one of the top four areas in which requests were received. *See* Chart No. 13.²⁷⁴

- Four providers reported having to turn employment issues away more than any other subject area and eight providers identified employment as one of the top three areas in which they had to turn away requests. *See* Chart No. 11.
- Ten providers identified employment issues among the top five most under-addressed legal needs confronting low-income District residents. *See* Chart No. 10.

Employment-related legal issues were also one of the most frequently mentioned legal issues in interviews conducted with community-based organizations. The need for assistance in this area was emphasized by organizations serving the immigrant community. For example, employment was one of the three legal issues most frequently raised by organizations providing services to the Hispanic community. The organizations noted that immigrants are often vulnerable to unfair employment practices. If they are discriminated against, mistreated or fired for discriminatory reasons, they are not aware of their rights and do not know where to turn or how to correct the situation. Additionally, the interviews revealed that many District residents are taken advantage of by employers because of a prior criminal conviction or face other barriers to employment.

Pro se statistics also evidence significant need. Data collected by OAH over two representative months demonstrates that only about 10 percent of all parties in UI appeals are represented by counsel. About the same number of employees as employers were represented.²⁷⁵ In 2005, more than 50 percent of appeals taken to the DC Court of Appeals from agency matters were conducted on a *pro se* basis and the overwhelming majority of those were unemployment matters. OAH identified the following issues faced by *pro se* litigants in UI appeals:

- understanding the OAH process;
- obtaining accurate information about appeals from DOES;
- understanding the substantive and procedural requirements of the UI statute; and
- controlling emotions that may be involved in a long-standing employment relationship.

To ultimately overcome these issues, OAH believes that legal consultation or representation on site is necessary.²⁷⁶

There are two programs that offer free legal advice and representation for UI appeals, one for employees through the Metropolitan Washington Council AFL-CIO and another for employers through the DC Chamber of Commerce. Both are funded via money collected as interest and penalty payments from employers due to their late filing of wage reports, and

Quality Trust for Individuals with Disabilities (Quality Trust) assisted Ms. Brown, the mother of a severely developmentally disabled adult daughter. Ms. Brown had cared for her daughter in her home her entire life. When Quality Trust first began to work with Ms. Brown, she was in her mid-80s and needed to make arrangements for when she was no longer able to take care of her daughter. Quality Trust counseled her regarding the various options for surrogate decision-making for her daughter, as well as options for ensuring her daughter's financial security and access to the proper supports for her daily life. Ms. Brown was extremely grateful to have received this type of comprehensive counseling.

late payment of employer contributions.²⁷⁷ Representation may be declined by the program. Very few pro bono lawyers represent parties in UI cases.²⁷⁸ City agencies, other than DOES, are generally represented by counsel.

Although the need for legal assistance in employment spans a variety of case types, providers indicated that the need is particularly acute with respect to employment discrimination and termination cases. Other case types which providers identified as among the top two for which they received requests include wage and hour claims, matters involving the Americans with Disabilities Act and/or the Rehabilitation Act in the employment context, unfair employment practices, insurance and other benefits issues and disputes under various human rights laws.²⁷⁹ Along with wage and hour claims, legal services providers also reported having to turn away requests for assistance with discrimination and termination claims more than any other case type. Termination, discrimination and wage and hour claims were also perceived by providers to be among the most under-addressed employment-related legal needs.

The resources that legal services providers are able to devote to employment issues are not commensurate with the need. In 2005, providers reported approximately six FTE paid legal services lawyers working in employment law.²⁸⁰ As a result, most providers lack the resources to litigate employment matters. One provider also suggested that many employment cases may fall through the cracks in the current system to the extent they constitute less than a full case, but require more than limited advice. Further, many private law firms have conflicts that preclude pro bono representation and the amount at stake is not enough to interest private attorneys. That being said, (due, in part, to the fee-shifting statutes that allow a plaintiff to recover attorneys' fees incurred in certain cases), the private bar is more active in employment law than in many other poverty law areas.

Providers have reported that resources are also needed to conduct community organizing and advocacy. For example, the EJC and other legal and social services providers advocated in support of the Accrued Sick and Safe Leave Act legislation, which gave workers a minimum number of paid days off when they or a family member falls sick.²⁸¹ Nationally, 76 percent of low-wage workers lack the benefit of such paid leave and, without it, workers are given the difficult choice of either missing work (thereby losing pay and possibly their job), reporting to work sick (possibly extending their illness or spreading it to others), or neglecting the needs of their family.²⁸² In March 2008, the Council unanimously voted to approve legislation that provided this leave to certain categories of workers. It also protects domestic violence victims who need time off for health or safety reasons and allows parents to use such days to attend to family needs.²⁸³

D. Estate Planning

Estate planning is for the poor as well as the affluent. As used in this report, estate planning means more than just asset management and tax planning. It includes planning for the inevitable and the unforeseen—whether appointing a surrogate decision maker for health and financial-related issues in the event of incapacitation or appointing a guardian for minor children in the event of death or disability. That is why estate planning issues affect a large segment of the low-income population, including not only older District residents and their families but also those with health concerns and those living in non-traditional households. In fact, all people who have reached the age of majority need estate planning.²⁸⁴

Low-income residents also have a substantial need for assistance with probate issues. Probate or estate administration is the process through which a deceased's financial affairs are settled and his or her property is distributed according to the deceased's will or intestacy laws. For those with few financial resources and little formal education, this process may be confusing. Being able to navigate it effectively, however, is also an essential means of accumulating or preserving wealth. For those living at or near the poverty line, even a small inheritance can make a tremendous difference in their quality of life.

1. OVERVIEW OF THE ISSUES

- a. **Wills and Other Planning Documents.** The estate planning issues of low-income people are frequently no different than those facing every other District resident. Estate planning involves planning for the future, such as disposing of assets (however minimal), providing for the care of minor children after the parent's death or disability, providing support for other dependents and addressing health care and other end-of-life issues. Individuals charged with administering estates and acting as trustees must negotiate the rules and requirements in those areas.

Individuals are likely to need legal assistance with the preparation of documents such as wills, durable powers of attorney and advanced medical directives. Each of these documents has a different and important function in ensuring that one's preferences will be followed with respect to end-of-life financial and health decisions. Generally, wills allow people to dictate how their assets will be distributed after death, powers of attorney designate agents to act for a person in the event of incapacitation and an advance medical directive memorializes the type of medical care a person wants in different situations.²⁸⁵

According to a study released by the American Association of Retired Persons (AARP) Research Group in 2000, approximately 60 percent of adults aged 50 and older have a will, but only 38 percent have a will and a durable power of attorney or both of those documents plus a living will (a document similar to an advance medical directive, but which only covers the ending of life).²⁸⁶ Younger people are even less likely to have completed estate planning.²⁸⁷ It is estimated that less than 30 percent of Americans document their wishes with respect to end-of-life care.²⁸⁸ Based on the makeup of its population, the percentage of District residents who have completed appropriate estate planning is likely lower than the national average. Specifically, persons with lower income, less education and who are African

American or Hispanic are less likely to have wills and other estate planning documents.²⁸⁹

Persons in non-traditional household arrangements have a special need for wills and other estate planning services because the District's intestacy laws give preference to immediate family members and domestic partners.²⁹⁰ This is a significant issue in the District where there are a large number of non-traditional households. Approximately 14.5 percent (or 16,750) of all District children live in grandparent-headed households and another 19 percent (or 5,374) live in households headed by other relatives.²⁹¹ Grandparents who have primary responsibility for their grandchildren may need assistance in preparing a will to ensure that a proper caretaker/guardian is appointed and that their grandchildren are financially secure after they die. If grandparents die intestate, it is highly likely that all of their assets will pass to their living children or other close relatives, not their grandchildren.

Having a living will or a durable power of attorney for health care also eliminates the need for a court to appoint a guardian to step in and make decisions for an incapacitated person. In the District, a guardian is appointed by the court to make personal welfare decisions for an incapacitated individual, known as a ward.²⁹² The guardian is responsible for the care, custody and control of the ward, within the conditions or limits the court may impose, and may manage a small sum of money on the ward's behalf and in the ward's interest.²⁹³

Incapacitated persons may also lose their right to administer their finances as they see fit without a financial or general power of attorney. A conservator will be appointed by the court to manage the property of a person that is found to be incapacitated or has disappeared.²⁹⁴ Once appointed, the conservator receives and expends the ward's money and other assets.²⁹⁵

- b. **Probate.** When a friend or relative dies, a District resident may stand to inherit such assets as real property. For low-income residents, this potential inheritance could mean a substantial improvement in their lives. Particularly given the shortage of affordable housing and declining rates of homeownership among low-income residents, the transfer of real property from one generation to another is an important means of curbing displacement of the District's poorest residents and addressing the widening income inequality gap.

Unfortunately, probate issues can be complicated matters that many District residents are unequipped to deal with on their own. Assistance may be required with either initiating the probate process or participat-

ing in or contesting an ongoing proceeding. Addressing such issues as unpaid taxes or property liens provides an additional layer of complexity. Without legal assistance, a beneficiary of an estate may not take advantage of available exemptions or could risk losing the property entirely.

2. THE EXTENT OF THE LEGAL NEED

Although almost a dozen legal services providers reported receiving requests for estate planning assistance in 2005, only three providers included estate planning in the top four subject areas in which they receive the most requests for legal services. Only one of those providers ranked estate planning first. Similarly, only a few providers specifically identified estate planning as one of the top three subject areas in which they had to turn away requests. Of those providers, two ranked estate planning first—*i.e.*, as the area in which they turned away the most requests.

For several reasons, however, the requests that providers received in this area may not be indicative of the need. First, as discussed below, few legal services providers actually provide estate planning assistance; as with other subject areas, an individual is unlikely to ask for assistance, if he or she thinks a provider does not offer it. This is particularly true with respect to probate issues, as so few providers do any work in this area. Second, many people may not request estate planning assistance because they fail to recognize that they have an actual need for it, or at least underestimate the extent of their need.²⁹⁶ Third, even if there is a recognized need for estate planning, most people—regardless of income—do not want to confront it because the subject of death and disability is an uncomfortable one.²⁹⁷

Perhaps more relevant is legal services providers' perception of the need. In that regard, when asked to identify the top five most under-addressed legal needs confronting low-income District residents, estate planning issues were mentioned by eight providers. Estate planning thus ranked fourth (behind housing, family, employment and tied with consumer) with respect to the subject areas in which providers perceive the most under-addressed legal need.²⁹⁸

The need is perceived to be particularly acute in the areas of probate, wills and estates, but the need for assistance with powers of attorney and guardianships and conservatorships was also mentioned by more than one provider. Two providers identified estate planning work as it relates to health care (*e.g.*, advanced medical directives). Wills, guardianships and conservatorships were also cited by some providers as the case types for which requests were most frequently turned away.

The DC Courts' *pro se* statistics for 2005 also reveal the need for estate planning legal assistance. The Probate Divi-

sion of DC Superior Court has jurisdiction over decedent estates and trusts, as well as guardianships and conservatorships. In 2005, nearly half of the formal probate matters²⁹⁹ before the Probate Division involved *pro se* plaintiffs.³⁰⁰ Almost all of the small estate matters (*i.e.*, those involving assets of \$40,000 or less) and the majority of the trust matters before the Probate Division involved *pro se* plaintiffs.³⁰¹ Similarly, in 2005, 40 percent of appeals to the DC Court of Appeals from the Probate Division involved a *pro se* litigant.

Providers indicated that approximately three FTEs were devoted to estate planning work in 2005; this is fewer FTEs than are devoted to any other subject area. And, of the six providers that reported doing any work in this area, five reported that less than half of a FTE attorney time was spent on these matters. Further, one of the providers limits its assistance to those living with HIV.³⁰²

Although the legal services system is able to devote few resources to this area, those resources make a difference. Not counting individuals who received brief advice or other limited assistance, providers reported that approximately 140 District residents received full representation in the estate planning area, with the majority of these involving the preparation of wills. Moreover, our discussions with legal services providers indicate that estate planning provides a real opportunity for pro bono participation as the matters can be discrete and may be appropriate for transactional attorneys or smaller firms. For instance, LCE has had a long partnership with the law firm Dickstein Shapiro in which lawyers from both organizations conduct a two-part seminar at hospitals on financial and health care powers of attorney. Participants in the seminar learn about why these documents are important and receive free assistance in completing them. By taking these preventative measures, participants can avoid having a court decide who should make decisions for them in their time of need.

In contrast, there is some indication that probate matters may be more difficult to place with pro bono lawyers. These cases can be difficult to screen and place because it is difficult to tell at the outset if the matter will involve complex tax, real estate or other issues that will require particular expertise.³⁰³

Recognizing that probate cases are generally too complicated for a general litigator, that few legal services providers actually do probate work, and that most probate lawyers are solo practitioners or with small firms that lack the resources to do extended pro bono work, the DC Bar Pro Bono Program established the Probate Resource Center in 2006. The Center provides brief services and advice to unrepresented parties or potential parties to proceedings in the Probate Division of DC Superior Court. Pro bono attorneys who staff the Center have a minimum of three years of probate experience.

Although the Probate Resource Center is a positive development for those low-income residents in need of probate assistance, there is still a substantial amount of unmet need. For example, Center volunteers indicate that well over half of the residents they see are in need of more extended assistance than the Center can provide. Those associated with the Center also recognize that many people are not yet aware of its existence.

The District's aging population makes it likely that the low-income community's need for estate planning assistance will continue to increase.³⁰⁴ One provider noted that it expects a greater need for legal assistance in the areas of guardianships, surrogate health care decisions and related issues due to changes in the law.

E. Family

1. OVERVIEW OF THE ISSUES

Low-income families may face many legal issues, which can include the need to get child support, protection from an abusive partner and access to health care.³⁰⁵ Children are also in need of legal assistance in a variety of other situations, including foster care placements and child abuse and neglect cases. The stakes involved in all of these cases are significant. Nonetheless, family law is an area in which litigants frequently have to face these complicated and emotional issues without a lawyer by their side.

In 2006, 114,881 children lived in the District.³⁰⁶ 54 percent were low income.³⁰⁷ Additionally, 10 percent of DC households are food insecure.³⁰⁸ Certain segments of society are hit harder than others. 64 percent of African American children live in low-income families.³⁰⁹

As with each of these subject areas, a detailed treatment of all the family-related issues far exceeds the scope of this

Before coming to Bread for the City (Bread), Ms. Johnson, a 47 year old Spanish-speaking immigrant, had been enduring years of domestic violence committed by the father of her now three year old child. Her abuser, an English-speaking United States citizen, did not provide any financial assistance for their child and threatened to kill Ms. Johnson whenever she brought up the subject of financial support. Her abuser used Ms. Johnson's isolation as a recent immigrant against her, often telling her that because she had no family in the United States, he could kill her at any time and nobody would notice. He often threatened to take away their child, knowing that this was one of Ms. Johnson's greatest fears.

With Bread's assistance, Ms. Johnson obtained a Civil Protection Order (CPO) against her abuser, which prohibited him from assaulting, threatening and coming within 100 feet of her and provided her with temporary custody of their minor child. Bread also assisted Ms. Johnson in extending her CPO and obtained a permanent custody order. The custody order was critical for Ms. Johnson to establish the safety of herself and her child, particularly since issues involving the child were a common source of conflict between the parents.

Over the past year and a half, Bread also has provided supplemental food and medical care to Ms. Johnson. Bread's Medical Clinic helped enroll her in the DC Healthcare Alliance and her child in DC Healthy Families. Since getting these services, Ms. Johnson has a sense of security and stability for herself and her child, and she is no longer afraid. She speaks passionately about one day providing for her child's college education and is enthusiastically making plans to take her child for the first time to visit her native country.

report. As a result, we are highlighting just a few areas: child support, domestic violence, child welfare, and the creation of the Family Court in DC Superior Court.

a. Child Support. Since the overwhelming majority of poor and low-income children come from single parent homes, there is a great need for child support enforcement services in the District, including establishing paternity and obtaining and enforcing child support orders. The U.S. Department of Health and Human Services reported 77,651 active child support cases in the District for fiscal year 2006.³¹⁰ Of these cases, 45 percent have orders permitting collections to be made;³¹¹ however, only about

half of these orders are being collected.³¹² One in four DC prisoners owes court-ordered child support.³¹³

Regular child support payments provide essential financial assistance to families and children living in poverty.³¹⁴ This is especially true since the enactment in 1996 of the Personal Responsibility and Work Opportunity Reconciliation Act, commonly known as welfare reform. That statute was designed to move families off of welfare. One of the most significant provisions is a lifetime 60 month limit on benefits. In order to avoid termination and to preserve possible benefits in the event of future need, it is very important for families to

Ms. Williams, a District resident, applied for custody of her three year old grandson Bob, after caring for him since his birth. Ms. Williams stepped in to care for Bob when her son's relationship with the child's mother deteriorated, and both parents were plagued by homelessness. Through free legal assistance from the Children's Law Center, Ms. Williams secured legal and physical custody of Bob and successfully applied for a subsidy from the DC Grandparent Caregivers Pilot Program. Now, because she has legal custody of Bob, Ms. Williams is able to make medical and educational choices on his behalf and has the desperately needed financial assistance to address his material needs. The free legal services Ms. Williams was able to secure, in addition to helping her gain legal custody of Bob, enabled her to improve her financial situation and her ability to meet her family's needs.

transition from welfare to other income—such as a combination of wages and child support—at the earliest opportunity.³¹⁵

Under federal law, the District is responsible for helping custodial parents establish paternity, obtain a court-ordered award of support and collect support payments. The District has been given powerful collection tools, including the ability to garnish wages and bank accounts, the right to intercept tax returns, the mandate to deny drivers' and other licenses to delinquent parents and access to a nationwide database of recent hires. While a family receives cash assistance from Temporary Assistance to Needy Families (TANF), the first \$150 of child support collected each month goes to the family and the balance to the District to pay back the cost of the benefit. Once a family leaves welfare, the District must still collect the support payment, but must pass it promptly through to the custodial parent. Thus, establishing a support order for a TANF family is important not only because it provides additional income, but because it might allow the family to leave welfare.

b. Domestic Violence. Although both men and women are victims of domestic violence, 95 percent of reported incidents of assaults in intimate relationships are committed by men against their female partners.³¹⁶ Nationally, women in the lowest-income households have seven times the reported abuse rates of those in the highest-income households.³¹⁷ In 2005, the Domestic Violence Intake Center reported that the majority of its clients reside in the city's poorest neighborhoods.³¹⁸

In addition, women with HIV/AIDS or at risk for HIV face a 50 percent chance of being a victim of domestic violence.³¹⁹ HIV exposure increases if women experience domestic violence; these women may not be able to take steps to prevent HIV infection and abusive partners are more likely to engage in high-risk behavior that may expose the woman to HIV.³²⁰

Domestic violence also has a profound effect on children. Children of battered women are up to 15 times more likely to be physically abused and neglected.³²¹ Children who witness abuse are 50 times more likely to abuse alcohol and drugs and six times more likely to commit suicide than children in the general population.³²²

Domestic violence exacerbates the economic challenges facing women. Many perpetrators deliberately sabotage victims' efforts to become financially independent by pursuing education or employment.³²³ Victims who are forced to leave their homes and jobs to escape the violence suffer financially.³²⁴ Poor women and children are more vulnerable to domestic violence because an abused parent with little money is more likely to be dependent on a violent partner. The lack of financial resources makes it difficult to hire an attorney, relocate, and obtain counseling and other forms of support.³²⁵

The legal needs of domestic violence victims frequently take a back seat to basic survival needs like shelter and food. Nevertheless, the number of case filings is striking: in 2006, there were over 6,700 domestic violence case filings in the District.³²⁶ In just one year, the Metropolitan Police Department (MPD) received 27,401 domestic-related crime calls—averaging one every 19 minutes.³²⁷ In cases where victim-offender relationships could be established from 2001 to 2004, MPD reported that there were 51 murders attributed to family-related domestic violence.³²⁸ In 2005, domestic violence accounted for approximately one-third of all reported violent crime victimizations.³²⁹

c. Child Welfare System. A well functioning child welfare system is critical for all those who come into contact with it—the parents, non-custodial caregivers, and, of course, the children. The District’s child welfare system has long been the subject of litigation and other reform efforts to ensure that children are safe and families kept together if at all possible.³³⁰ While numerous improvements to the system have been made,³³¹ the shortcomings that remain affect thousands of District families and have a disparate impact on low-income residents. For instance, the Child and Family Services Agency (CFSA) gets an average of 450 reports per month of suspected child neglect or abuse through its hotline.³³² About 85 percent of these cases are accepted by the hotline workers for investigation, and a full investigation must be completed with 30 days.³³³ The Center for the Study of Social Policy reports that only 45 percent of child abuse and neglect investigations are completed within the 30 day deadline.³³⁴ CFSA substantiates the allegations of abuse or neglect in about 30 percent of the investigations.³³⁵

CFSA’s federal court-appointed monitor issued a report in November 2007 analyzing the agency’s investigative performance.³³⁶ The monitor found that in half of the cases examined, the five contacts necessary to close the case were not made.³³⁷ Also, in four of the five individual cases in which a parent should have been referred to a specialist for mental health treatment, no action was taken.³³⁸ The report noted that lax supervision, an emphasis on timeliness over quality in the case processing and the unwelcoming attitude of some hotline call operators have been longstanding issues in the agency.³³⁹

As discussed in more detail in Section V.B, the Family Court is required by statute to appoint and compensate a lawyer for an indigent parent once the OAG, which prosecutes child abuse and neglect cases, files a petition with the Family Court alleging abuse or neglect. However, a lawyer is not provided during the investigation stage of the process, where many of the facts about the case are developed and when the government makes its initial decision about the child’s well-being.

In 2005, 85 percent of the petitions were for neglect and 15 percent were for abuse, which is consistent with national figures.³⁴⁰ Some have argued that the government’s interest in rescuing children in neglect cases has resulted in children being removed from their homes for issues directly or indirectly related to poverty.³⁴¹ As of November 2007, about 2,600 abuse and neglect cases were still pending.³⁴²

Under federal and District law, there are four primary options for a permanent placement of a child who has been removed from his or her home because of abuse or neglect—reunification, legal custody, adoption, or guardianship.³⁴³ While reunification with the parent(s) is the goal for more than 40 percent of the children in the system,³⁴⁴ achieving this goal is dependent, in part, on the ability of the CFSA to provide appropriate supportive services. Despite years of litigation, CFSA has failed to take many steps necessary to provide critical reunification services.³⁴⁵

For those children who cannot be reunited with the custodial parent, legal custody by a non-custodial parent, adoption and guardianship are other options for a court to consider.³⁴⁶ In 2005, 215 children reached permanency through reunification, 51 through legal custody, 279 through adoption and 218 via guardianship.³⁴⁷

Children who are removed from the home due to an abuse and neglect proceeding will almost invariably come into contact with the District’s foster care system. In 2006, 2,313 children and youth under the age of 22 were in foster care in the District.³⁴⁸ Young adults aged 19 to 21 accounted for 12 percent of the foster care population, representing an increase from recent years.³⁴⁹ Despite improvements to the foster care system, many children remain in foster care far longer than good practice permits. Approximately 21 percent of the children who entered foster care in both 2001 and 2002 remain in care respectively five or four years later, a record which needs improvement.³⁵⁰ In 2004, 117 DC children left the child welfare system and had their Family Court cases closed without achieving a permanent family because they had reached age 21; in 2005, 90 children did the same.³⁵¹ Children leaving foster care without a permanent home are at an increased risk of involvement with the criminal justice system, unemployment and homelessness.³⁵²

d. Creation of Family Court. In an effort to improve the treatment and disposition of family law cases, Congress passed the District of Columbia Family Court Act of 2001.³⁵³ The Act provided for an extensive re-organization of how the court processes and resolves family law cases. Among other things, it set the number of judges who would sit on the Family Court, established minimum qualifications for the judges, instituted a “one family, one judge” requirement for cases and proceedings, created positions for Family Court magistrate judges and required the DC Superior Court to establish standards of practice for appointed attorneys.³⁵⁴

Following this legislation, Congress also provided funding for the DC Superior Court to enter into a contract with a nonprofit organization to improve the representation provided by a GAL in family law cases. By statute, the government must provide GALs to represent the child's interest in the proceedings. This contract went to the CLC.³⁵⁵ CLC serves as a GAL in many cases and also provides training to the panel attorneys who serve as GALs. While panel attorneys who represent parents are also required to undergo training, there is no similarly situated nonprofit organization that is dedicated to serving parents in these critical family law proceedings.

2. THE EXTENT OF THE LEGAL NEED

There were about 21 FTE paid legal services lawyers working in family law in 2005. These lawyers provided full representation in about 560 family law cases. Domestic violence cases constituted almost 30 percent of the total. It, along with custody/visitation and adoption/guardianship, were the main case types where these lawyers provided full representation. It is important to note that the staffing and case figures do not include the work of legal services lawyers in cases where there is a right to counsel. The right to counsel cases are discussed in Section V.B. As with the other subject areas, they do not reflect cases and matters handled by pro bono lawyers. It also does not count the work of OAG, which has a unit dedicated to representing individuals in domestic violence cases. Even though there are more attorneys working on family law issues than any other area, our survey and the DC Superior Court *pro se* statistics illustrate that the need for assistance with family law issues remains overwhelming:³⁵⁶

- In our survey, seven providers ranked family law first as the subject area in which the most requests for legal assistance were received.³⁵⁷ 18 providers ranked family law among the top four areas in which requests were received, which was also higher than any other subject area. *See* Chart No. 13.
- All five generalist organizations included family law in the top three subject areas in which they received the most requests.³⁵⁸ Besides housing and family law, there was no other subject area that each of these providers included within the top four subject areas of most requests for legal assistance.
- Providers reported that family law was the subject area in which requests for legal services were most frequently turned away. *See* Chart No. 11.
- Family law ranked second among the subject areas in which providers perceive the greatest level of unmet need. 18 providers identified one or more family issues as one of the five most under-addressed civil legal needs facing District residents. *See* Chart No. 10.

- In the community-based organization interviews, family-related issues were identified as one of the most frequently mentioned legal issues facing the District's low-income community.

Survey respondents noted that low-income families need assistance with a variety of family law issues:

- Providers that reported receiving requests for family law assistance identified custody/visitation, divorce, domestic violence, support (spousal or child), abuse and neglect and adoption/guardianship as the main case types for which they received the most requests.
- Case types most frequently cited as being turned away included: child support, divorce, custody/visitation, adoption/guardianship and domestic violence, with custody and divorce the most frequently cited.
- Child custody, support, divorce and domestic violence were among the case types most commonly cited as going unaddressed by providers. One provider noted the need for assistance with multi-jurisdictional custody and support issues, explaining that while many people move to or from the District, most providers focus only on disputes arising in the District. Several other providers also noted the difficulty residents face in finding legal services attorneys, particularly bilingual attorneys, who can take time consuming divorce cases and the difficulty that women in prison confront when seeking family-related legal assistance.

Providers ranked family law issues second among the subject areas in which they expect the need for civil legal services to increase over the next two years. In particular, an increase in custody cases is expected due to changes in the law. These changes include the fact that grandparents can now receive subsidies for taking care of their grandchildren. In addition, some expect domestic violence cases to increase; among other reasons, changes to the Intrafamily Offenses Act³⁵⁹ were cited as the likely cause.

Perhaps most telling are the DC Superior Court *pro se* statistics from the Family Court.³⁶⁰ In the Family Court, 38 percent of plaintiffs were *pro se* in adoptions cases and 77 percent of plaintiffs were *pro se* in divorce/custody/miscellaneous cases. On the respondents' side, nearly 38 percent were *pro se* in divorce/custody/miscellaneous cases, and over 98 percent of respondents were unrepresented in paternity and child support cases.³⁶¹ In recognition of the large number of unrepresented litigants, the Family Court, in conjunction with the DC Bar Pro Bono Program, opened the Family Court Self-Help Center in October 2002. The Self-Help Center, which was initially staffed by volunteers, is now run by full-time court staff, with supplemental assistance from volunteers. Like other resource centers at the DC

Courts, staff provides legal information and assistance with filling out court forms, but cannot provide legal advice or representation. In 2005, the Self-Help Center provided legal information and help filling out forms for 4,500 people and made 500 referrals to legal and social services providers.

In 2005, about 98 percent of both petitioners and respondents in the Domestic Violence Unit³⁶² were *pro se*. The extremely low rate of legal representation in domestic violence cases is particularly troubling, as a study has shown that the provision of legal services is one of the three main factors that accounted for the decline in domestic violence nationally during the 1990s.³⁶³ Intake centers have been set-up to serve victims of domestic violence. The centers are located in DC Superior Court and adjacent to Greater Southeast Community Hospital in Southeast. The Southeast location opened in 2003 in recognition of the fact that a high percentage of the domestic violence filings were from Wards 7 and 8. People seeking assistance can get a variety of services at these centers, including help with filling out forms to get a restraining order, access to social and crime victim's compensation services and assistance with filing a police report. Lawyers are also on-site to answer questions and provide immediate representation in certain instances. A third intake center, which is in Northeast, opened in 2008.

In addition to providing individual legal representation, legal services providers work to ensure that legislation assists families most in need of help. An example is the District's Grandparent Caregivers subsidy, which supports low-income relatives (grandparents, great-aunts, great-uncles) who have assumed parental responsibilities when a parent is unavailable. The pilot program went into effect March 1, 2006, making the District one of the first jurisdictions in the country to provide this subsidy. The program would not have been enacted without the efforts of LCE, CLC and LAS.

Practitioners in the family law area have increasingly recognized the importance of systemic advocacy to meet the array of needs in this area. In our survey, providers noted a range of issues where such advocacy would be helpful:

- Reforming laws and practices that return children to their relatives rather than keep them in foster care and creating a plan to ensure that fewer children experience multiple foster care placements,
- Legislative advocacy on behalf of domestic violence survivors,
- Expediting child support awards and enhancing collection procedures, and
- Streamlining the process for resolving child abuse and neglect cases.

Community organizations also provided examples of reforms that they would like to see pursued, such as a system

that would monitor court-appointed attorneys in child welfare proceedings, regulations permitting prioritization of public housing relocation for battered women and development of special allowances for delinquent rental payments for these women.

Although attorneys alone cannot solve all of a family's problems, legal advice, representation and systemic advocacy efforts can make a tremendous difference in helping low-income families deal with emotionally charged family law issues and achieve fair results in complex court and administrative proceedings.

F. Public Benefits

1. OVERVIEW OF THE ISSUES

Public benefits are intimately connected with poverty in the District. As said by one provider, "no one with a low income can avoid public benefits issues at some point or another." Another provider noted that all of their clients fall below federal poverty guidelines and are eligible for public benefits, but are not aware of the programs for which they qualify.

A variety of federal and local programs are designed to help fill the gap between the income and needs of District residents. These programs include TANF, social security, homeless services, food stamps, Medicaid, child-care services, emergency rental assistance, utility assistance and other forms of public health insurance.

Low-income families in the District are sizable recipients of public benefits. In 2005 alone, 31,945 families applied for TANF subsidies; 38,878 applied for food stamps; 73,314 children and youth were enrolled in Medicaid; and more than two-thirds of DCPS students received free or reduced-cost lunches.³⁶⁴

A summary of the main programs is provided below:

- TANF.** TANF is a federal block grant program that provides cash assistance to very low-income families with children. Families must fall well below federal poverty guidelines to qualify. While 25 percent of the District's 108,483 families live below the federal poverty level, only 15.7 percent received TANF in 2005. The average TANF payment for a family of three in the District is \$407 per month (compared to \$490 in Maryland and \$389 in Virginia) and is lower than similar payments in half the states.³⁶⁵ The District's TANF benefits have fallen nearly 36 percent since 1990 after adjusting for inflation.³⁶⁶
- Social Security.** The Social Security Administration (SSA) runs the SSI program and the OASDI program.

The Legal Aid Society of the District of Columbia (LAS) was contacted by the family of an Ethiopian immigrant who had a life-threatening stroke. At the time of the stroke, he was enrolled in emergency Medicaid to pay for the treatment necessary to survive the immediate crisis. However, because of his immigration status, he was not eligible for the full Medicaid program. He was stabilized and ultimately discharged from the hospital. While emergency Medicaid coverage lasts up to six months, it pays only emergency expenses and does not pay for ongoing care. LAS's client was sent home to his family to languish, and likely to die, with no provision for medication or therapy.

Ordinarily, a low-income uninsured adult living in the District can secure treatment through the District's safety net medical insurance program—the DC Healthcare Alliance. LAS's client was denied enrollment in the DC Healthcare Alliance as the result of an interpretation of the program's regulations that prohibited coverage during the period of eligibility for emergency Medicaid. He had slipped through the cracks between these two programs.

Every day the client grew worse and suffered without care. LAS sought emergency relief in the administrative tribunal that ultimately resulted in his securing DC Healthcare Alliance coverage. The case was also used to persuade the District to change its regulations to clarify that coverage should not be denied in these circumstances.

When a LAS lawyer first met the client, he could not swallow, walk or speak. Since receiving treatment, much of his function has returned and he is getting the needed care.

SSI is an income supplement designed to assist low-income elderly and people who are disabled. OASDI provides benefits directly to workers and their families when the worker retires, dies or becomes disabled. In December 2005, 21,166 District residents, including 1,984 elderly and 19,182 individuals who were disabled, received federally administered SSI payments.³⁶⁷ Approximately 13 percent of District residents are OASDI beneficiaries, including 76.3 percent of the District's population aged 65 or over.³⁶⁸ SSA reported that 71,190 persons in the District received OASDI benefits in December 2005.³⁶⁹ In 2005, 873 disabled District residents who received social security disability benefits had their benefits terminated.³⁷⁰ Of course, this figure does not include the number of applicants who were denied coverage.

- c. Food Stamps.** The federal food stamp program provides benefits to individuals based upon income eligibility. A family of three was entitled to benefits in fiscal year 2006 if its gross income did not exceed \$20,928 per year.³⁷¹ In the District, more than 45,000 households participate in the food stamp program, which is more than 15 percent of all city residents.³⁷² The number of children in families who applied and were eligible for food stamps dropped by 4 percent in 2006.³⁷³ Though food stamp participants are located throughout the city, supermarkets are not. One in five food stamp households has no supermarket within a half-mile of home, forcing recipients to pay a premium for shopping at smaller grocers.³⁷⁴ As a result, the full financial benefit of the federal food stamp program is not realized.
- d. Medicaid and Related Programs.** In the District, the Medical Assistance Administration is the local Medicaid agency that administers the medical assistance programs and other health care financing initiatives.³⁷⁵ In 2005, one in four residents, over 140,000, was served by the Medicaid programs.³⁷⁶ The District also offers insurance programs for immigrant children; the State Child Health Insurance Program; and Medical Charities, a locally funded program.³⁷⁷

Additionally, the Health Care Safety Net Administration, which oversees and ensures that eligible uninsured residents of the District are provided access to adequate health care, assists the District in its Health Services Reform Initiative.³⁷⁸ It works closely with DC Healthcare Alliance (DC Alliance), which is the public-private partnership between the city and private health care providers to give those in need access to an array of health care providers.³⁷⁹ DC Alliance targets individuals who are not eligible for Medicaid. In fiscal year 2006, DC Alliance enrolled 40,148 people.³⁸⁰ Participants receive free medical care and prescriptions if they go through participating physicians and hospitals.³⁸¹
- e. Emergency Rental Assistance.** In 2006, the District reinstated the Emergency Rental Assistance Program (ERAP).³⁸² ERAP provides monetary assistance to low-income families at risk of eviction, which helps these families from entering the District's emergency shelter system. The program is administered by four community based grantees and funded by tax payments.³⁸³ As of December 2006, approximately 250 families received rental assistance.³⁸⁴
- f. Emergency Utility Assistance.** The District of Columbia Energy Office administers the Low Income Home Energy Assistance Program. The District can serve only about 39 percent of the 58,000 residents that qualify for the program.³⁸⁵

2. THE EXTENT OF THE LEGAL NEED

Legal services providers consider legal assistance with public benefits to be a pressing need. In terms of the number of requests for assistance received, public benefits was ranked first by one provider; however, 13 providers ranked it among the top four subject areas. Most providers identified OASDI/SSI cases as the type for which they received the most requests. These providers are diverse in size and focus, which demonstrates the universal nature of the need for legal assistance with public benefits in the District. Although named as one of the most pressing legal needs by social services providers working in several of the District's wards, public benefits issues are particularly acute in Ward 8, which has the highest poverty rate in the city.³⁸⁶

Many issues contribute to the extensive legal needs facing District residents in the public benefits area:

- The benefits programs are insufficient to address residents' needs.
- Some people fail to apply for benefits to which they are entitled because they are unaware that they are eligible, because they are daunted by the application process or for other reasons.
- Public benefits rules and regulations are some of the most technical and complex among the poverty law areas. These regulations challenge even experienced advocates.
- Residents are regularly confronted with the denial or termination of benefits.
- As in many areas, immigrants or LEP speakers may face even more difficulty applying for and receiving benefits to which they are entitled because of language and cultural barriers, as well as questions about their immigration status.

The problems confronting the low-income community can be compounded by the governmental agencies charged with delivering these public benefits. Some providers noted that in the public benefits area, government workers often do not understand the laws and frequently give clients incorrect information. Others in the legal services community contend that the main agency responsible for administering the public benefits programs, the DC Department of Human Services (DHS), has frequently proven unresponsive to the needs of low-income families.³⁸⁷ DHS is short-staffed in administering these programs and often unable to handle the complexity of the procedures.³⁸⁸ As a result, public benefits recipients frequently experience unexpected difficulty in obtaining their benefits.³⁸⁹

A recent issue with drug benefits is an example. Until January 1, 2006, persons eligible for both Medicaid and

Medicare received coverage under the Medicaid program for co-payments of \$1 per prescription. After January 1, 2006, that benefit was taken away. Those eligible for both programs—"dual eligibles"—were automatically enrolled in a drug plan and charged \$1 for generic drugs and \$3 for brand name drugs for medications within the plan. Beneficiaries paid full cost for medications outside a given plan. Automatic enrollment was random and did not take into account what drugs an individual was taking and what medications the plan covered. Beneficiaries could change coverage, but the process was complicated and required Internet access.

There were several problems implementing the program. During the first year, auto enrollment did not work and some individuals were not enrolled in any plan. Plans did not provide prescription cards to some members. Significantly, even if an individual was enrolled, they were not showing up as a dual eligible and were being charged a large co-pay, as much as \$100 or more, when they should have been charged \$1 or \$3. Even though plans had committed to providing a transitional supply of medication for individuals who were automatically enrolled in a plan that did not cover all of their medications, many plans were reluctant to provide this supply. It was hard to get through to the plans' customer service lines and, when you could get through, it was extremely difficult and time consuming to find someone to help.

As a result, vulnerable elderly and disabled individuals did not get their medications. Providers worked with clients who had serious and chronic illnesses, including mental illness, cancer and HIV disease, who lost coverage through bureaucratic snafus.

The initial start-up period created significant work for providers, but it did not end there. Responding to this issue has become a regular part of legal services practice and has redirected resources from other health law efforts. And, the issue with this program is an ongoing problem. Each year, drug insurance companies change their formulary. Dual eligibles must re-enroll in a new plan if a medication is dropped. Often, they do not learn of the change until they are at the pharmacy. In November and December 2007 alone, LAS and WWLC helped more than 100 dual eligibles fix drug benefits problems.

Due to the government's large role in public benefits issues, legal services providers have long worked with agencies on both the local and federal levels to advocate for sufficient benefits and to ensure that the rules and regulations governing various programs are equitable. For instance, legal services providers were very involved in the successful effort to increase the District's TANF payment. On the federal level, the WWLC submitted comments to the SSA pointing



out several problems in SSA's proposed regulations dealing with appealing denials of OASDI and SSI decisions. These providers' on-the-ground experiences with clients provide a valuable perspective for the agencies to consider when administering these programs.

Our survey asked legal services providers to report the number of District residents to whom they provided full representation. Those providers working on public benefits matters and able to supply figures reported providing full representation to about 420 persons, with the majority of cases related to social security, Medicare and TANF benefits.

Approximately 12 FTE legal services attorneys focused on public benefits matters in 2005. Not surprisingly, legal services providers reported having to turn away requests for public benefits assistance. Two providers reported public benefits as being among the top three subject areas where people were turned away. In addition, five providers ranked public benefits as one of the five most under-addressed legal needs confronting low-income District residents. Specifically, providers noted that clients who may be eligible for public benefits simply lack knowledge of this threshold fact. The need for legal and social services providers to provide outreach and education in this area is particularly important because these programs help the populace meet their basic needs until they get back on their feet.

The *pro se* statistics demonstrate the pervasiveness of the need for legal assistance in this area. In 2006, 871 public benefits appeals were filed with OAH. OAH estimates that over 95 percent of the parties proceeded unrepresented with their TANF, food stamps, Medicaid and interim disability

assistance cases.³⁹⁰ District residents proceeding *pro se* often do not understand the applicable substantive law and procedural rules. If they do not appear at the scheduled hearing, the case is dismissed.

Providers anticipate an increase in the need for legal services relating to health benefits and mental health services; this increased need will have a natural impact on the need for public benefits.

G. Health/Disability

1. OVERVIEW OF THE ISSUES

Poverty negatively affects the health of District residents.³⁹¹ Thus, it is not surprising that the District, which has one of the highest poverty rates among all states in the nation, also has the lowest life expectancy.³⁹²

There is also a strong correlation between poverty and disability.³⁹³ About 33 percent of District residents who are disabled live below the poverty line, compared to about 20 percent of the total population.³⁹⁴ Poverty is both a cause and a consequence of disability. Both conditions may limit or prevent access to employment, education, health care and health insurance.³⁹⁵

A complete inventory of all the health issues that city residents face far exceeds the scope of this report. Therefore, we have chosen the issues of health insurance, behavioral health, HIV/AIDS and medical debt just as an illustration. We recognize that the challenges facing the District's low-income community extend far beyond these

issues, but we hope our summary gives at least some insight into the extent of the problems.

a. Health Insurance.³⁹⁶ Adequate health insurance can help address the range of health and disability issues that confront this community; however, as explained below, despite a number of health insurance programs in the District, many low-income residents still do not receive adequate health care.

- The percentage of District residents without health insurance is lower than the national average.³⁹⁷ However, many people do not utilize all the benefits of their health coverage due to limited facilities and primary care physicians in the District.
- Poor adults and near-poor adults (those with family incomes between 100 percent and 200 percent of the poverty level) are about three times more likely to be uninsured than are non-poor adults.³⁹⁸ The uninsured population includes childless couples, single men, those who do not fall within Medicaid eligibility guidelines and those whose income exceeds Medicaid thresholds, but who do not have access to employment-based coverage.³⁹⁹
- There are approximately 70,000 families with children enrolled in the DC Healthy Families program (including Medicaid and the Medicaid expansion programs).⁴⁰⁰ Yet, 10,000 residents under the age of 18 had no medical insurance coverage in 2006.⁴⁰¹ Numerous persons that qualify for public coverage are not currently enrolled.⁴⁰²
- Fewer than 5 percent of dentists participate in the Medicaid program and fewer than 30 percent of children received dental services, in spite of a federal early and periodic screening, diagnostic and treatment requirement.⁴⁰³ In addition, lower-income children have significantly higher levels of dental disease and treatment needs in comparison to the population at large. The tragic death of Deamonte Driver, a 12-year-old Prince George's County resident who died when an untreated dental infection spread to his brain, is just one illustration that dental care is not a cosmetic issue; lack of adequate care can be a serious, life-threatening problem.⁴⁰⁴

b. Behavioral Health.

- Mental health treatment is a significant concern. Only about 5 percent of the nearly 9,000 children with a mental health disorder were expected to be treated in fiscal year 2006.⁴⁰⁵ Fortunately, the District's fiscal year 2008 budget includes funding for the Department of Mental Health to expand a number of services.⁴⁰⁶
- Among District residents, 9.4 percent of those aged 18 and older experienced serious psychological distress in the past year.⁴⁰⁷ At least one-third of the DC Detention Center's approximately 3,500 inmates suffer from severe mental illness, for which they often do not receive adequate treatment.⁴⁰⁸
- At least 63,000 residents—more than one in nine—are addicted to drugs or alcohol, double the national addiction rate.⁴⁰⁹ Yet the budget for DC's Addiction Prevention and Recovery Administration was cut by \$3 million in 2003, decreased an additional \$2 million between 2003 and 2005 and received a net cut of 4.4 percent between 2007 and 2008.⁴¹⁰ There are long waits to get into detox programs or the few residential treatment beds that exist; as a result, the District assists only 14 percent of its addicts.⁴¹¹
- People with mental health or addiction disorders confront legal issues related to employment, housing and homelessness, preservation of medical confidentiality, discrimination and institutionalization.

Mr. Nelson, a young man who has spent a significant amount of time in residential treatment centers, psychiatric hospitals, homeless shelters and jail, had never received consistent community-based services. Mr. Nelson also suffers from mental illness and a cognitive disability. Following his release from jail, he did not have any arrangements to receive mental health care, access to medicine or assistance in finding a home or job.

University Legal Services (ULS) encountered Mr. Nelson while he was living in a shelter and proceeded to request a Medicaid hearing for home and community-based services. Unfortunately, just prior to the hearing date, Mr. Nelson was involuntarily held at St. Elizabeth's Hospital.

ULS attorneys persisted to join all the relevant agencies together in one court proceeding, including the Department of Mental Health, Department of Health and Department of Disability Services. By getting these agencies to collaborate, ULS was able to ensure that Mr. Nelson received the proper services upon release. Following multiple conferences and considerable effort, ULS secured emergency relief for Mr. Nelson.

Now, thanks to ULS's efforts, Mr. Nelson is taking part in society in ways he had never known. He lives on his own, after receiving admission to a pilot program administered by the Department of Mental Health. He has attended an orientation for a job training program and is working closely with a psychologist to help him live more independently and avoid reinstitutionalization.

c. HIV/AIDS.

- The District's AIDS rate is the worst of any major city in the country. In 2006, there were 12,428 people reported as living with HIV and AIDS in the District.⁴¹² Notably, District residents with AIDS appear to be late testers—almost 70 percent of AIDS cases progressed from HIV to AIDS in less than one year from diagnosis, indicating missed opportunities for prevention and treatment.⁴¹³ Nationally, only 39 percent of people with AIDS are considered late testers.⁴¹⁴
- HIV/AIDS is the fourth leading cause of death in the District. By contrast, it does not fall within the top 15 causes of death in the country.
- Roughly 1 percent of people aged 13 to 24 in the District are HIV positive or have AIDS, and almost 2 percent of those aged 25 to 34 are HIV positive or has AIDS.⁴¹⁵ The estimated HIV rate among teens and young adults has almost doubled in five years.⁴¹⁶ In the District, low-income communities are affected disproportionately by HIV/AIDS.⁴¹⁷
- Individuals with HIV/AIDS confront legal issues related to employment, access to health care, preservation of medical confidentiality, discrimination and, for some District residents, immigration status.⁴¹⁸

d. Medical Debt. A medical crisis can often drive a low-income family or individual into crippling debt. Without medical insurance, people with small health issues often wait for treatment until the condition becomes serious. The emergency room, by necessity, is often a primary care provider.

Without insurance, or if there is an error in a coverage determination, the cost of care can be more than the low-income individual can pay. In hundreds of cases each year, hospitals and other health care providers sue in the Civil or Small Claims Divisions of the DC Superior Court. The deck is stacked against defendants in these cases. They are usually one of dozens, if not hundreds, in court in a given day and among dozens being handled by a collections lawyer. In the Small Claims Division, only about 2 percent of defendants are represented.⁴¹⁹

Low-income litigants are not versed in their rights and therefore rarely assert them. Without a lawyer, it is very difficult to achieve a favorable result. With an advocate involved, a coverage dispute can be resolved or the health care provider may be more willing to waive or reduce the claim.

2. THE EXTENT OF THE LEGAL NEED⁴²⁰

More than one-third of the legal services providers reported receiving requests for legal assistance with health/disability

law issues. Two providers ranked health/disability law as the area in which the most requests for legal assistance were received. Three providers ranked it among the top four subject areas. Most of the cases involved American with Disabilities Act accommodation issues. In addition, one provider identified Rehabilitation Act issues and another reported Mental Retardation and Developmental Disabilities Administration (MRDDA) matters as a case type.⁴²¹

Several providers noted the health-related legal needs of low-income individuals and those with disabilities are largely unmet. One provider, whose expertise falls outside this area, reported that health/disability cases fell within the top three subject areas where they had to turn away cases. Three identified health/disability issues among the five most under-addressed legal needs confronting low-income District residents, and one of these providers ranked it as the single most under-addressed legal need. Another provider noted that people who are mentally ill have difficulty getting representation in any type of case.

As reported by the providers, approximately 15 FTE legal services attorneys focus on health/disability matters. They are concentrated among relatively few providers. Notably, one provider, ULS, has an attorney staff of approximately ten FTEs who are wholly focused on health/disability matters since ULS is the designated protection and advocacy provider in the District. Pursuant to federal statute, each state must have such an organization to address the needs of the disabled. In addition to advocacy on behalf of individuals, ULS is involved in policy work and significant class action cases.⁴²²

In addition to individual and class action representation, there is a significant need for lawyers to work on non-litigation related systemic matters in the health and disability area. These issues most frequently require negotiations with agencies, but sometimes require legislative action. They also frequently overlap with public benefits issues. In recent years, advocates have worked to:

- Ensure that language access provisions and consumer protections have been included in the managed care contracts for Medicaid providers,
- Increase funding for a program that would provide home health care to persons 50 to 64 so that they can avoid institutionalization, and
- Stop predatory and deceptive marketing practices for Medicare Advantage plans aimed at seniors and persons with a disability.

Two legal services providers cited health and disability law as subject areas in which the need for legal services will increase over the next two years. In particular, providers felt that mental health issues will pose an increasing problem. As of

2005, there were over 39,000 veterans residing in the District.⁴²³ More than 1.3 million troops have been deployed since September 11, 2001 to serve in Iraq and Afghanistan, and the number of new veterans residing in the District will likely increase in the next five years.⁴²⁴ Reports of widespread mental health problems that returning veterans already are facing provide a further indication that health/disability needs will continue to grow.⁴²⁵

H. Housing

Virtually no one with a low income can avoid housing issues at some point. For the homeowner, it may be an unscrupulous lender engaging in predatory lending practices.⁴²⁶ For the public housing resident, it may be a complaint about the conditions in the unit. For people who are homeless, the issue may be the need for shelter. For the renter, it may be the prospect of eviction. For all of these residents, housing discrimination may be a concern. Regardless of the legal problem, the outcome can have serious consequences.

1. OVERVIEW OF THE ISSUES

A summary of some of the housing issues that affect the low-income community follows.

- a. **The Lack of Affordable Housing.** Housing problems in the District have become more pressing in recent years due to rising housing prices. Throughout the 1990s, the District lost 6 percent of its rental housing stock, largely from low-income neighborhoods.⁴²⁷ At the same time, rents have increased dramatically. In 2001, the average advertised monthly rent in the District for a two bedroom apartment was just under \$1,000.⁴²⁸ Over the next two years, that rent jumped to

Volunteer attorneys from a law firm secured through the DC Bar Pro Bono Program are representing tenants living in a 20 unit residential apartment building in a gentrifying area of Northwest in their dispute with their landlord about the living conditions in their building.

After the tenants voted down the landlord's proposal in early 2007 to convert the apartment building to condominiums, conditions in the building deteriorated markedly and the tenants suffered enormously. One tenant, an HIV-positive man, has lived in the building his entire life through the receipt of Section 8 vouchers. His apartment is infested with roaches and other insects; there are exposed wires, holes and rotted drywall from water damage, water damaged cabinets and rusted and corroded pipes. He has reported these problems to the management on numerous occasions, including providing reminders when he drops off his money order for the rent each month.

The tenants are worried about what will happen to their homes. The owners are likely to try again to get tenant approval for a conversion to condominiums. The building is at a critical juncture. Aggressive repairs might make it possible for these tenants to save their homes. Frustration with inadequate conditions could lead to a different result if the condominium election is proposed again and repairs are not made.

Attorneys for the tenants are actively negotiating a resolution of the dispute while preparing to litigate a request for an injunction requiring repairs should negotiations fail. The attorneys also helped the tenants overcome their first legal hurdle by properly incorporating the tenant association. The tenants are more confident about saving their affordable homes and restoring habitable conditions now that they, like the landlord, have sophisticated legal advocates on their side.

\$1,750.⁴²⁹ In 2005, after adjusting for inflation, the median price of an existing single-family home in the District was \$415,000, up 21.6 percent from 2004.⁴³⁰ Further, in 2004, the District lost 12,000 affordable housing units that were replaced by 15,000 high-cost rentals or high-value homes.⁴³¹

As a result, many District residents are experiencing what the federal government defines as unaffordable housing costs (*i.e.*, costs which consume more than 30 percent of household income on housing) or severe housing cost burdens (*i.e.*, at least 50 percent of household income is spent on housing). In 2004, low-income households—in this case, defined by the DC

Fiscal Policy Institute as those with incomes below 30 percent of the area median income (or \$25,600 for a family of four)—accounted for almost half of the 93,000 households with unaffordable housing costs and 73 percent of the 43,000 households with severe housing burdens.⁴³²

The lack of affordable housing has made homeownership largely unattainable for the District's poorest residents. Between 1997 and 2005, the percentage of home mortgage borrowers in Ward 2 who were very low income (or earning less than 50 percent of the area median income) fell from 11.5 percent to 2 percent.⁴³³ In Ward 5, where the homes are more moderately

priced, the percentage of very low-income borrowers fell even more dramatically, from 33.9 percent to 3.9 percent.⁴³⁴ And, in Ward 8, where home prices are among the lowest in the District, the percentage of very low-income borrowers fell from 52.6 percent to 20.7 percent.⁴³⁵

Poverty has become more concentrated in the District over the last decade. According to a report by the Fannie Mae Foundation, “The number of high-poverty census tracts in the city rose from 36 in 1990 to 43 in 2000, [and the] number of extreme-poverty tracts . . . rose even more dramatically—from ten to 23.”⁴³⁶ The result is that fewer poor families live in mixed-income neighborhoods.⁴³⁷

The District is becoming more economically segregated with each new development project. Low-income families are priced out of much of the District. At the end of 2005, the metropolitan average rent for apartments in buildings with five or more units rose 1.4 percent from 2004 to \$1,179. The District’s average rent rose at an even faster rate of 3 percent to \$1,321.⁴³⁸ For this unit to be affordable (*i.e.*, for rent to constitute 30 percent or less of total income), the tenant must earn at least \$52,840 per year. The development of Chinatown and Columbia Heights has put additional pressures on the District’s affordable housing stock. The development of the Anacostia Waterfront will further limit options for low-income tenants.

Concentrated poverty bears a cost for the District. Studies demonstrate that it is more expensive to provide fire, public safety, transportation and other services in concentrated low-income areas.⁴³⁹

The District has a number of programs and laws aimed at preserving affordable housing. Those identified below are just a few examples. More legal assistance and advocacy are needed to ensure that these laws and programs are being implemented effectively and funded appropriately, to resist efforts to scale them back and to educate residents about how to use them.

i. The Comprehensive Housing Strategy Task Force

In an effort to address the District’s housing problems, the city established the Comprehensive Housing Strategy Task Force (Task Force) in 2003.⁴⁴⁰ The Task Force was charged with assessing the quality and availability of housing for households at all income levels, recommending ways to preserve and create mixed-income neighborhoods, providing sufficient housing to allow for notable growth in the District’s population and helping the District become an “Inclusive City” by overcoming barriers of race, education, income and geography in housing.⁴⁴¹

The Task Force released its final report in the spring of 2006, laying out a 15 year blueprint for achieving its goals.⁴⁴² The Task Force’s housing recommendations were largely consistent with the District’s draft comprehensive plan for the future development of the city, completed in 2003.⁴⁴³ In summary, the District’s plan for preserving and bolstering affordable housing is a multi-faceted approach involving strategies such as regulatory reform, revising zoning and other techniques to encourage housing production and implementing inclusionary zoning and mechanisms, such as community land trusts and subsidies, to make a significant share of all new production affordable.⁴⁴⁴ A recent study commends the District’s plan in many respects.⁴⁴⁵ Nevertheless, it noted that to implement the plan effectively, there is much to be done.

ii. Tenant Opportunity to Purchase Act

Among the more powerful statutes available to assist tenants is the Tenant Opportunity to Purchase Act (TOPA).⁴⁴⁶ This law provides tenants with the first right to purchase their housing unit when the owner decides to sell.⁴⁴⁷ It also provides tenants with other valuable rights, such as the right to assign or sell their right to purchase to a third party.⁴⁴⁸ Significantly, however, a study conducted by the Harrison Institute for Public Law at Georgetown University Law Center concluded that most District residents do not understand these benefits or the process for exercising them.⁴⁴⁹

To exercise their TOPA rights, tenants must first be aware of them and act quickly. For example, when tenants of a building with five or more units seek to exercise their opportunity to purchase, they must, among other things, incorporate a tenants’ association (if one does not already exist), organize at least a majority of the occupied rental units and submit an application for registration.⁴⁵⁰ They must also negotiate a contract of sale, line up a developer and obtain financing.

As with almost any significant real estate transaction, lawyers are critical to the successful implementation of TOPA, but there is a shortage of experienced lawyers in this area.⁴⁵¹ Among other things, lawyers can assist with tenant education and organizing, contract negotiations and drafting, and navigating the District’s landlord/tenant law.⁴⁵² Lawyers can also assist clients in defending against efforts by some property owners to circumvent the statute. For example, in 2005, the legal services community and others persuaded the Council to close a loophole in the statute pursuant to which certain property owners would retain a 5 percent interest in the property; by

doing so the transaction would not be classified as a “sale” under applicable law and, thus, would not trigger TOPA.⁴⁵³

iii. The New Communities Initiative

The District’s New Communities Initiative seeks to maintain the availability of affordable housing by aiming for one-for-one replacement of subsidized housing, ensuring that families can afford to stay in the neighborhood in which they currently live, creating a mixed-income community for long-term neighborhood viability and advocating for a policy requiring that new housing be built on publicly controlled lands before distressed housing is demolished.⁴⁵⁴ While the initiative is a laudable idea, its execution needs to be monitored to protect the interests of the District’s poorest people.⁴⁵⁵ There is also a serious concern that resources will not be sufficient to preserve the redeveloped property as affordable housing.

iv. The Housing Production Trust Fund

Funded through a dedicated portion of deed and recordation taxes, the Housing Production Trust Fund (Fund) supports the production and preservation of affordable rental and ownership units.⁴⁵⁶ 40 percent of the Fund’s expenditures serves only those with very low incomes (*i.e.*, at or below 30 percent of the area median income), and units subsidized by the Fund have been built in every ward except Ward 3.⁴⁵⁷ As of April 2007, there was nearly \$90 million in the Fund.⁴⁵⁸ However, a 2007 report from the DC Fiscal Policy Institute noted that there are close to \$250 million in identified spending needs.⁴⁵⁹ With projected expenditures anticipated to outweigh the remaining funds and anticipated revenues, vigilant advocacy is essential to ensure the viability of this important source of affordable housing. Such advocacy has already proved highly effective: legal services providers and other community organizations collectively advocated for and received \$19 million in funding from the Council to make up for a shortfall in the Fund’s projected 2008 revenues, plus an additional \$11 million which was specifically earmarked to fund supportive housing initiatives.

- b. The Need for Subsidized Housing.** The lack of affordable housing has significantly increased the need for subsidized housing. At the end of 2007, there were approximately 57,000 people on the waiting list for one of the District’s three subsidized housing programs.⁴⁶⁰ In 2000, the last time the wait list was updated, 25,000 people remained on it; the marked increase in the waiting list between 2000 and 2007 is one indication that subsidized housing is practically drying up.⁴⁶¹ In areas of the District where real estate prices have risen most sharply, more property owners are discontinuing participation in Section 8 contracts and converting their buildings to condominiums. Contracts for almost one-third of the District’s 11,101 active housing units subsidized under Section 8 and other federal multifamily programs were set to expire between October 2006 and September 2007.⁴⁶²

In addition, the number of public housing units in the city has dropped from 9,400 in 2001 to 8,100 at the end of 2007.⁴⁶³ As the number of public housing units has decreased, the Housing Authority has attempted to make up the shortfall using vouchers.⁴⁶⁴ In 2001, 5,800 families held housing vouchers; that number nearly doubled to 11,200 by the end of 2007.⁴⁶⁵ Taken together, the District is assisting 19,300 families through public

Mr. Wilson, a father of five children residing in a transitional housing program, contacted Washington Legal Clinic for the Homeless (WLCH) after he was denied a housing choice voucher. The denial was based on the existence of a debt to the District of Columbia Housing Authority (DCHA) from when Mr. Wilson’s family resided in public housing eight years earlier. When Mr. Wilson lived in public housing, he gave his paycheck over to his wife to pay the rent. He assumed she was paying it, but instead, she was saving it for herself in order to move out of the unit and separate from him.

After she left, Mr. Wilson and his children (all of whom remained in his legal custody after the couple’s separation and divorce) were evicted, moved into a shelter and then into transitional housing. When Mr. Wilson called WLCH, he was extremely fearful that his family would have to move back into shelter yet again, disrupting the many successes they had experienced as a family—all of his children were on the honor roll at school and, while not making enough to afford market rent in the District, Mr. Wilson was earning \$15/hour at a steady job.

WLCH appealed the denial of eligibility based on a new legal argument in the District—that because the debt to public housing was older than DC’s statute of limitation on such claims (three years), federal law prohibited DCHA from using the debt as a bar to assistance. After several months of advocacy, Mr. Wilson won his appeal and received his housing choice voucher in time to move his family smoothly from transitional housing to permanent housing.



housing and housing vouchers.⁴⁶⁶ In addition, the DC Housing Authority administers the newly-created, DC-funded local rent supplement program which funded approximately 600 tenant-based vouchers and nearly 600 project- or sponsor-based units in fiscal year 2007. These numbers are dwarfed by the tens of thousands of families still on the wait list.

- c. The Need for Shelter.** Homelessness is also a significant problem in the District. As of January 2007, about 5,700 people in the District were homeless.⁴⁶⁷ After several years of consecutive increases, this figure represents a 6.5 percent decrease from 2006, due, in part, to the placement of formerly homeless residents.⁴⁶⁸ Still, the District accounts for nearly 50 percent of the metropolitan region's homeless.⁴⁶⁹

The number of homeless families seeking shelter has more than doubled in the last ten years, prompting city officials at one point to ask landlords to delay evicting tenants who are unable to pay their rent.⁴⁷⁰ In 2006, 2,114 families applied for emergency shelter at the District's central intake facility, including an estimated 3,332 children.⁴⁷¹ However, emergency shelter apartments or alternative services served only 442 of those families.⁴⁷² As of 2006, the estimated wait time for a family seeking emergency shelter was at least six months.⁴⁷³

For many District residents who are homeless, the lack of shelter is a byproduct of personal problems that give rise to other legal issues. At the same time, these problems likely decrease the chances that such individuals will seek assistance. For example, as of January 2007,

27 percent of people who were homeless suffered from chronic substance abuse and 24 percent suffered from severe mental illness.⁴⁷⁴ And, the majority of District residents who are homeless suffer from at least one disabling condition.⁴⁷⁵ The District also has a particularly high rate of homeless veterans. An estimated 7.5 percent of the nearly 32,000 veterans in the District live on the streets, in shelters or assisted housing—a result largely attributable to the post-traumatic effects of their service coupled with a lack of affordable housing.⁴⁷⁶ This situation illustrates the need for permanent housing subsidies for veterans.⁴⁷⁷

- d. The Homeless Services Reform Act.** The Homeless Services Reform Act (HSRA) was enacted in 2005.⁴⁷⁸ The statute seeks to provide a “comprehensive range of services designed to meet the specific, assessed needs of individuals and families who are homeless or at imminent risk of becoming homeless.”⁴⁷⁹ Such services include emergency shelters, transitional housing and permanent housing. Among other things, the HSRA sets standards regarding eligibility for services; client rights and responsibilities; requirements that must be followed for clients to be transferred, suspended or terminated; and the procedures through which clients can contest adverse actions. It also creates an Inter-agency Council to improve coordination among the various agencies and stakeholders that are regularly involved with homeless services.

In order for the HSRA to be more than just words on paper, advocacy is necessary to ensure that residents

are apprised of their rights and responsibilities. The statute is complicated and, thus, the rights it affords District residents are not always apparent. Whether a program is covered by the statute depends primarily on its source of funding, which often requires some investigation to identify.⁴⁸⁰ A resident's rights under the statute and the standards applicable to housing providers can depend on the type of program at issue.⁴⁸¹ Further complicating the matter is that other laws, such as the District's landlord/tenant laws, the DC Human Rights Act or federal statutes and regulations, may also be applicable.

Advocacy is also necessary to safeguard residents' rights when programs do not comply with statutory requirements. Since its enactment, there have been numerous instances in which programs transfer or terminate a client without first satisfying the statutory prerequisites for doing so or providing the tenant with proper notice. If a client in an emergency shelter poses an imminent threat to the health or safety of the residents or others on the shelter grounds, that client may be subject to an "emergency action"—immediate transfer, suspension or termination without procedural protections, such as prior notice and the right to stay in shelter pending a hearing.⁴⁸² Advocacy is particularly critical in the case of such emergency actions because the consequences can be so severe. In some cases, these disputes may be resolved by a simple phone call from a lawyer knowledgeable about the HSRA. In other cases, parties may need to use the grievance procedures for obtaining administrative review and a fair hearing.

Finally, in addition to individual representation, administrative advocacy is also necessary. As of July 2008, no regulations implementing the statute have been promulgated. Lawyers are needed to help develop implementing regulations that clarify how rent is calculated in transitional and permanent supportive housing, set forth clear eligibility criteria for housing programs and other emerging service models and establish precise guidelines for independent case management services.

e. Eviction Proceedings and Other Landlord/Tenant Disputes. Renters outnumber homeowners in the District.⁴⁸³ This is particularly true in the low-income community, where the lack of economic resources coupled with the affordable housing shortage has made homeownership largely unattainable. As a result, assistance with landlord/tenant disputes traditionally encompasses a substantial component of the city's legal services work.

Legal assistance is needed for a wide variety of landlord/tenant disputes, ranging from eviction proceedings, rent increases, safety deposit returns, code violations and other health/safety issues. Because landlord/tenant proceedings are summary procedures by law, unrepresented tenants are frequently at a disadvantage.⁴⁸⁴

If a tenant cannot articulate a defense to the landlord's claim on the first court date, the court may be required to enter a judgment giving the landlord the right to evict without any further proceedings.⁴⁸⁵ There are a number of defenses that a tenant might have in such situations, but may not be aware of without the assistance of counsel. For example:

- A landlord's failure to maintain the premises in compliance with housing codes may be a viable defense to a claim for failure to pay rent.⁴⁸⁶
- The federal Fair Housing Act or the DC Human Rights Act may afford disabled tenants a defense to certain claims.⁴⁸⁷
- A tenant living in publicly subsidized housing may also raise the landlord's failure to comply with regulatory requirements as a bar to suit.⁴⁸⁸

Certain unrepresented landlords are also at a disadvantage. While more than 90 percent of landlords have counsel, there are a small number of landlords, usually those renting a room in their primary residence, who have trouble navigating the system because they cannot afford a lawyer. As a result of a landlord's failure to comply with certain procedural prerequisites to filing suit, they may lose substantial income to which they would otherwise be entitled.⁴⁸⁹

The powerful impact an attorney can have on landlord/tenant disputes is evident. Approximately two-thirds of defendants who appear in Landlord/Tenant Court have their cases closed by confessions of judgment or consent agreements, notwithstanding claims or defenses that may be applicable.⁴⁹⁰ In contrast, tenants who are represented by counsel rarely enter consent judgments.⁴⁹¹ Similarly, a New York City Housing Court study concluded that low-income tenants who had the benefit of legal representation fared better than their unrepresented counterparts.⁴⁹²

Eviction proceedings are among the most urgent landlord/tenant disputes. In 2007, there were just over 2,000 evictions in the District.⁴⁹³ The resulting harm to the evicted tenants and the cost to the District can be staggering. Studies demonstrate, for example, that homeless children fare far worse educationally than their peers.⁴⁹⁴ And, evicted families that end up in the government's shelter system cost the District more than \$28,000 a year.⁴⁹⁵

f. Housing Discrimination. Housing options available to many of the District's low-income residents are further constrained by unlawful discrimination. A 2005 study commissioned by the District's Department of Housing and Community Development (DHCD) concluded that housing discrimination is a continuing problem, practiced by some realtors, mortgage lenders, insurance companies, property managers and owners.⁴⁹⁶ Such unlawful conduct includes discrimination based on national origin, sources of income, race and disability.⁴⁹⁷

The two most frequent areas of discrimination are source of income and mental disability. Under the DC Code, landlords cannot refuse to rent to tenants who pay their rent with a subsidized voucher.⁴⁹⁸ Nevertheless, legal aid lawyers frequently encounter clients who were outright refused or subjected to subtle barriers that denied them a lease. Tenants with mental disabilities are similarly vulnerable to discrimination.

Although some housing discrimination victims have sought recourse through the legal system, it is likely that most do not.⁴⁹⁹ The problem thus becomes a self-perpetuating one as noncompliance with fair housing laws likely results from the belief that discriminatory conduct will not be recognized or prosecuted.⁵⁰⁰ To remedy the problem, the DCHD study recommended that the District undertake a series of actions including fair housing testing followed by legal action and a public awareness campaign.⁵⁰¹ The DCHD study noted the dearth of information on fair housing issues and deemed it "critical" that the low-income community, particularly immigrant and other vulnerable populations, be made aware of their rights and legal resources.⁵⁰²

g. Tax Foreclosures. If a homeowner in the District fails to pay his or her annual real property taxes within a specified time period, the home is subject to a tax sale at which it may be sold for as little as the amount of the outstanding tax bill.⁵⁰³ Homeowners fail to pay taxes for many reasons, including lack of funds, confusion between the mortgage company and homeowner as to who bears responsibility for the bill, delivery of the tax bill to the wrong address or delivery to a resident who fails to transmit it to the property owner. Regardless of the reason, the consequences of a failure to pay can be substantial.⁵⁰⁴

Accordingly, in 2007, the DC Superior Court, DC Bar Pro Bono Program and the law firm of Morgan, Lewis & Bockius launched the Tax Sale Resource Center, which provides advice to unrepresented parties who seek to redeem their property after a tax sale has occurred.⁵⁰⁵ Following a tax sale, a successful bidder must file an action in DC Superior Court to foreclose the

owner's right of redemption. The property owner has an opportunity to redeem the property before the suit is filed by paying certain costs and back taxes. After the suit is filed, the owner may still redeem the property, but the costs of doing so increase as they also include the reasonable attorneys' fees and costs incurred by the bidder in any action to foreclose.

The need for tax sale assistance is substantial given the stakes involved and the complexity of the issues. Many homeowners are unaware of their redemption rights, how to exercise them or even how to get updated information regarding the amount of taxes owed. Residents who are elderly or disabled also may be unaware of certain programs that can qualify them for tax relief.⁵⁰⁶ Further, many cases require investigation into whether the property is properly classified for tax assessment purposes or whether all of the procedural requirements relating to the sale and foreclosure have been satisfied. Many also involve complicated title and probate issues.

While the opening of the Tax Sale Resource Center marked a significant development, there is still more work to be done. Many individuals in need of tax sale assistance do not know of the Tax Sale Resource Center or other resources that may be available. Outreach and education is necessary to advise homeowners of their rights and to encourage them to exercise them as early as possible, before the costs go up as a result of a foreclosure action. Advocacy is also necessary to assist low-income residents with rising property taxes; while emergency assistance is available for renters, there is nothing comparable for homeowners.

h. Deed Theft/Mortgage Fraud. Deed theft or mortgage fraud is another major issue in the low-income community, particularly for elderly residents. This problem frequently takes the form of a foreclosure rescue scam in which desperate, cash-poor homeowners facing foreclosure are offered alleged financial assistance with their arrearages and/or mortgage payments. (Scammers can easily identify such homeowners because foreclosure proceedings are public and contact information regarding the homeowner is easily available.) Unsophisticated homeowners may believe assurances that they are getting a loan on their home; in reality, the homeowner signs documents that transfer the home to the person allegedly offering assistance or to a "straw purchaser." Often, the homeowner signs documents which purport to make them tenants in their own homes. If the homeowner (who is now being called a "tenant" by the perpetrator of the scam) fails to pay the rent, he or

she could be subject to eviction. While the homeowner may be given an opportunity to buy the house back after a certain period of time, it is typically at a cost that far exceeds the amount the perpetrator loaned or paid to the homeowner and also far exceeds what the homeowner can pay. In the meantime, for the cost of the arrearages (which may be only a few thousand dollars), the purchaser obtains the deed to the property and all the equity the homeowner had built up. For elderly residents who have owned their homes for many years, this equity can be substantial. Then, as part of the fraudulent transaction, the straw purchaser or fraud perpetrator frequently obtains a new, much larger mortgage against the property, stripping the equity.

Among other forms of deed theft are outright attempts by family members or acquaintances to steal the deed—for instance, by forging the document or a power of attorney—and mortgage fraud schemes which include offers by purported lenders to provide refinancing in exchange for an upfront fee. In such schemes, the “lender” may take the fee without ever providing the assistance or the refinancing may be on misleading and predatory terms.

While the legal theories and statutes used to recover homes are not overly complex, these cases are document intensive and time consuming because they involve multiple parties. In addition, the fraud often involves complicated shell games to hide the true nature of the transaction and to strip equity from homes. Such cases can take years to resolve. Because banking institutions may also be involved, the specter of possible conflicts of interest can make it difficult to place such a case with pro bono attorneys at large law firms.

2. THE EXTENT OF THE LEGAL NEED

Along with family law, housing was one of the top two areas in which providers reported receiving requests for legal services in 2005. Six providers ranked housing first and more than half ranked it in the top four subject areas. *See* Chart No. 13.⁵⁰⁷ Providers most frequently cited landlord/tenant disputes and eviction matters as one of the top two case types for which requests were received. Public housing, housing discrimination, shelter and foreclosure matters were also cited by more than one provider.

Providers also perceive housing to be the area in which there is the greatest level of unmet need. Indeed, 21 out of 28 providers identified a housing case type as one of the five most under-addressed legal issues confronting District residents. Case types frequently identified included eviction and affordable housing,⁵⁰⁸ followed by landlord/tenant disputes and shelter cases.

With respect to affordable housing issues, one provider noted that, while the District has pro-tenant laws, by the time tenants know what is planned for a building and can organize, it is usually too late to take advantage of available legal remedies. That same provider added that employing the laws to tenants’ advantage is difficult even when tenants are sophisticated and know their legal rights; it is even harder when the tenants are undereducated, are LEP and/or are already overwhelmed by the circumstances of their poverty. This provider’s sentiments were echoed in our community-based organization interviews, where subjects raised the concern that tenants throughout the city were being wrongfully evicted and/or unknowingly waiving their rights.

Employing the laws to tenants’ advantage is difficult even when tenants are sophisticated and know their legal rights; it is even harder when the tenants are undereducated, are LEP and/or are already overwhelmed by the circumstances of their poverty.

The number of people who are forced to proceed unrepresented in housing cases also demonstrates the continuing need for legal assistance. In 2005, there were nearly 50,000 defendants sued in Landlord/Tenant Court.⁵⁰⁹ In almost all of these cases, the plaintiff sought to evict the defendant. 93 percent of plaintiffs were represented.⁵¹⁰ Plaintiffs dismissed about 60 percent of the Landlord/Tenant Court cases before the first court hearing.⁵¹¹ Of the remaining defendants, only about 3 percent had counsel.⁵¹²

Public funding for civil legal services that began in fiscal year 2007, while extremely helpful, will make only modest inroads into the problem of the lack of representation in Landlord/Tenant Court. Seven lawyers have been hired by three legal services providers to provide on-site assistance to litigants who need same day representation. Two or three of these lawyers are present on any particular day. These cases are extremely resource intensive, as the lawyers report that even taking five cases a day would take up all of their time. While not every litigant required to appear in Landlord/



Tenant Court needs or wants a lawyer, the complexities of the law in this area make it very difficult for the uninitiated to proceed successfully.

There is also a scarcity of legal services lawyers serving tenants in rental housing cases. In October 2005, OAH assumed jurisdiction from the DCRA over these cases. This jurisdiction is significant because tenants are prohibited from bringing affirmative cases in Landlord/Tenant Court, and, therefore, OAH is now the most easily accessible forum for challenging rent levels and building conditions and bringing other complaints against landlords. The overwhelming majority of the tenant petitions transmitted to OAH were filed *pro se*.⁵¹³ Many of these *pro se* tenants brought claims against housing providers who are represented by experienced counsel.⁵¹⁴

Pro se tenants face several difficulties in their rental housing cases, including: knowing how to file a petition properly, reviewing complex statutes and case law, understanding OAH's procedural rules, facing experienced counsel, withstanding motions to dismiss and understanding the interplay with the Landlord/Tenant Court and the preclusive effect previous litigation may have on the case.⁵¹⁵ To address these difficulties, OAH says that it assists *pro se* tenants in a variety of ways. It maintains a list of legal services providers, uses pre-printed forms, explains procedural rules in case management orders, does not hold parties to procedural technicalities and has regular meetings with *pro se* litigants and representatives of both landlords and tenants.⁵¹⁶

The District's DCRA has long had part of its mission to provide assistance to tenants in the District regarding a wide range of matters. Given other challenges facing the agency, there was no consistent or coordinated strategy to provide information, education or assistance to District renters. To resolve this gap in services, the District government created the Office of Tenant Advocate (OTA) in 2006. OTA is responsible for "Provid[ing] education and outreach to tenants and the community about laws, rules and other policy matters involving rental housing, including tenant rights under the petition process and formation of tenant organizations."⁵¹⁷

OTA was also authorized to represent the interest of tenants and tenant organizations before the Council, the executive, and in certain judicial proceedings.⁵¹⁸ OTA was initially part of the DCRA, but became an independent agency on October 1, 2007.⁵¹⁹ Since its creation, OTA has negotiated contracts with legal services providers and private attorneys to handle some tenant-related matters, both before administrative agencies and in DC Superior Court. Significantly, OTA's charge is not limited to low-income tenants, and, as a result, provides significant services, including free legal assistance, to tenants who would not qualify for assistance from any legal services provider.

Providers reported that slightly more than 20 FTE paid lawyers did housing-related work in 2005 and provided full representation to about 1,160 District residents. The majority of the cases involved evictions. To a lesser degree, full representation was provided in cases involving property tax assessments, housing conditions, rent control and foreclosure. Even though there are more legal services housing lawyers than in almost any other subject area, they still cannot meet the overwhelming requests for services in this field. Along with family and consumer law, providers also identified housing as one of the top three subject areas in which they had to turn away requests for assistance. See Chart No. 11.

Due to limited resources, attorneys focus their attention on the most immediate and urgent matters—eviction and other cases in which the client risks losing his or her home. However, there is also a substantial need for additional types

of representation that can effectuate widespread change. Indeed, providers believe that a focus on affirmative cases filed on behalf of tenants (*e.g.*, housing code violation cases, tenant association cases and tenant right-to-purchase cases) is more effective in achieving systemic change. Others indicated a desire to reform the “one strike, you’re out” public housing rule,⁵²⁰ to work toward creating more resource centers like the Landlord/Tenant Resource Center and to work toward reforming Landlord/Tenant Court. Given additional resources, providers would also focus on other forms of representation, including transactional matters (*e.g.*, building purchases by tenant associations) and brief services (*e.g.*, letter writing), which can resolve a housing dispute before it results in litigation.⁵²¹

Recognizing the importance of such efforts, the legal services community has allocated some of its limited resources to policy and systemic advocacy. For example, legal services lawyers meet regularly with officials of the DCHA to assure that its policies and practices serve the client community. They have addressed issues such as DCHA’s adoption of a new public housing lease, planned update of the subsidized housing waiting list, the operations of the Housing Choice Voucher Program, the city’s New Communities Initiative and the framework for the District’s local rent supplement program. Legal services lawyers have worked with community collaborations such as the Fair Budget Coalition and the Affordable Housing Alliance to advocate for enhanced funding of vital programs and policies that promote the preservation and expansion of affordable housing, such as inclusionary zoning, and to promote the development of permanent supportive housing. These lawyers also have begun to work with organizers and community members to address development issues east of the Anacostia River.

Community-based organizations throughout the city also recognize housing as an area with substantial unmet legal needs. Housing was one of the most frequently mentioned legal issues in interviews conducted with community-based organizations. Organizations noted assistance is needed with matters including:

- Landlord/tenant disputes and evictions. In addition to educating District residents of their basic legal rights as tenants, organizations noted the importance of having legal counsel develop payment plans when people fall behind on their rent.
- Section 8 and multifamily programs.
- Preservation of affordable housing. Organizations expressed particular concern about residents, especially elderly residents, who are vulnerable to condominium conversions.
- Dealing with unscrupulous lending and predatory practices.

- Foreclosures. Many homeowners can no longer afford the increased property taxes on their homes or the increase in mortgage payments after an adjustable rate mortgage moves to a higher rate after a few years.

Housing was the subject area most often identified by providers as the one in which the need for civil legal services is expected to increase over the next two years. Preservation of affordable housing was by far the most frequently cited case type for which providers predict an increased need. Other related case types include rent increases, housing and voucher assistance, foreclosures, predatory lending and development scams and tax assessment issues. One provider also noted that litigating landlord/tenant cases will become more critical because low-income tenants who lose their rentals will have nowhere to move. However, on a more optimistic note, the housing market slowdown might provide opportunities to reverse some of the setbacks the low-income community has suffered stemming from the lack of affordable housing.

I. Immigration

1. OVERVIEW OF THE ISSUES

The problems facing low-income residents with unresolved immigration issues are significant. At the most basic level, immigration issues may result in deportation. Beyond that, an immigration problem compounds many other legal issues. For example, it may impede a resident’s ability to obtain much needed public benefits and services.⁵²² Language barriers and prejudice can exacerbate the difficulty that immigrants have in getting equal access to our judicial system.

Immigrants come to the District from many countries, and their numbers are growing. From 1980 to 2000, the immigrant population in the District rose from 40,559 to 73,561—an 81.4 percent increase.⁵²³ While the total District population declined by 6 percent in the 1990s, the immigrant population grew by 25 percent.⁵²⁴ In 2005, immigrants comprised nearly 13 percent of the District’s population.⁵²⁵ Most of the immigrants in the District come from Latin America, Asia and Africa.

According to the 2000 Census, 9.4 percent of the District’s population is Hispanic, although many contend that the figure is closer to 13 percent.⁵²⁶ By 2010, the District will have an estimated 70,000 Hispanic residents.⁵²⁷ The growth in the Hispanic population is particularly apparent among youth: as a whole, the number of children in the District decreased 3 percent between 1990 and 2000, while the population of Hispanic children grew 66 percent.⁵²⁸ About 50 percent of the foreign born population in 2006

Capital Area Immigrants Rights (CAIR) Coalition is working with Teresa, a 20 year old immigrant and her adoptive mother, Ms. Carter, to secure legal status amidst numerous challenges. Teresa arrived in the United States at the age of eight through the use of another child's U.S. birth certificate after Teresa's biological father found out that she had suffered sexual and other abuse by extended family members in her home country. Shortly after Teresa came to the United States, her father was arrested, and he has been incarcerated ever since. After her father's arrest, Teresa was taken in and cared for by Ms. Carter, a U.S. citizen born and raised in Washington, DC.

Ms. Carter enrolled Teresa in school, and obtained health care and counseling to work through the abuse Teresa suffered in her home country. Ms. Carter initially petitioned pro se for guardianship over Teresa in DC Superior Court, but the judge recognized that

Teresa's legal problems were much more complicated. Ms. Carter eventually obtained pro bono legal representation.

With pro bono legal help, Ms. Carter and Teresa made substantial efforts to remedy her undocumented legal status. They continue to face obstacles every step of the way. Because Teresa's abuse took place in her home country, the District rejected Teresa from obtaining Special Immigrant Juvenile Status. Then, Ms. Carter adopted Teresa. Yet again, Teresa and Ms. Carter face a challenge, because Teresa was brought here as a young child using another child's birth certificate. As a result, U.S. immigration authorities signaled that Teresa could not obtain family-based immigration status while in the United States. Pro bono counsel is seeking to resolve this problem.

Facing extreme uncertainty and long delay in reentering the United States if she returned to her home country, (a place where Teresa has no contacts and traumatic childhood memories), Ms.

Carter and Teresa have been forced to live in the economic and legal shadows of Washington, DC. Teresa, a DC public school graduate, cannot obtain employment, even though the nonprofit where she volunteers thinks that she is a model volunteer and would like to hire her immediately. When Ms. Carter and Teresa moved into a new apartment, the landlord requested police clearance proving that Teresa never had been arrested, but DC's Metropolitan Police Department refused to give her one, because she could not prove that she has lawful immigration status. Teresa is scheduled to enroll in college next semester, but even that prospect is uncertain, because Ms. Carter, who works and pays taxes, may not be able to afford to send her. Ms. Carter and Teresa need the assistance of pro bono counsel to guide them through what has already been a traumatic and frustrating process. Hopefully, with continued assistance, Ms. Carter and Teresa will navigate the immigration process successfully.

came from Latin America.⁵²⁹

Hispanics in the District face specific challenges. These individuals tend to be poorer, less likely to have health insurance and less likely to utilize health care services than other residents.⁵³⁰ In addition, housing issues are a persistent concern. Although many individuals are eligible for housing programs, they, like many other immigrants, confront language isolation as well as the general problem of the District's limited supply of affordable housing.⁵³¹

In 2004, Asians were about 3.3 percent of the District's population.⁵³² Recent immigrants from Asia may also face challenges. For example, many Vietnamese immigrants are refugees who had little education in Vietnam and must hold multiple jobs to survive in the District.⁵³³ The challenges vary across communities. For example, the immigrants residing in Chinatown tend to be older and in need of various health care services.⁵³⁴

In 2006, 14.4 percent of the total foreign-born population in the District had emigrated from Africa.⁵³⁵ Of the

major U.S. cities, only New York City has more African immigrants.⁵³⁶ Immigrants settle in the District from all parts of Africa, with the largest contingent coming from Ghana, Ethiopia and Nigeria.⁵³⁷ Leaders in the African immigrant community report that African-born individuals have a less cohesive identity than Asian or Hispanic immigrants.⁵³⁸ The District government has opened an Office of African Affairs to meet the growing needs of this population.

Some neighborhoods have high concentrations of immigrants that come from countries such as El Salvador, Vietnam, Ethiopia, Honduras and the Dominican Republic.⁵³⁹ Certain neighborhoods, such as Mt. Pleasant, Adams Morgan and Columbia Heights, have high concentrations of poor immigrants.⁵⁴⁰ Such a melting pot of customs, languages, religions and social outlooks creates a complex and diversified set of issues and needs.

2. THE EXTENT OF THE LEGAL NEED

a. Immigration-Related Assistance. Providing represen-

tation for immigration matters is no doubt a pressing civil legal need in the District. Our survey asked legal services providers to rank the subject areas in which requests for legal assistance were received in 2005. Five providers responded by ranking immigration first and another five providers ranked it among the top four subject areas. The five providers listing immigration as having the most requests are all specialists in immigration assistance. The additional five providers responding reflect the volume and pervasiveness of the community's need for legal assistance in this area. Of the providers that received requests for immigration-related legal assistance, deportation/removal proceedings and status/classification requests were the most common case types.

Community-based organizations identified immigration as one of the most frequently raised issues among low-income residents. Because immigrants have traditionally resided in particular city neighborhoods, the need for legal assistance is more acute in some wards. For example, a few of the legal services providers providing immigration assistance are located in Ward 1, which has large numbers of Asian, Latin American and African immigrants. Yet, community-based organizations report that even wards, such as Wards 7 and 8, where immigrants have not traditionally resided in large numbers, are experiencing an increased need for legal assistance in immigration matters.

Data from the courts also demonstrates a significant need for legal assistance with immigration-related issues. From 2002 to 2005, the number of matters received by the immigration courts nationwide increased 27 percent. Although the immigration courts reported an overall decrease in matters received from 2005 to 2006, the immigration courts that hear the overwhelming majority of cases for District residents reported an increase in matters received from 2005 to 2006.⁵⁴¹ Nationally, since 2002, the percentage of those appearing in immigration court *pro se* has increased 68 percent to 10,000.⁵⁴²

As reported in our survey, approximately 11 FTE legal services attorneys focus on immigration matters on behalf of District residents.⁵⁴³ Notably, these attorneys work at smaller providers; providers with more than nine paid FTE attorneys reported no attorneys working on immigration matters. Two providers that do immigration work each reported less than one paid FTE attorney devoted to the immigration needs of District residents. Further, none of the providers with budgets of over \$1 million ranked immigration as the subject area for which they received the most requests in 2005.

Since immigration is a federal issue, immigration legal services providers located in the District serve a large number of people from neighboring jurisdictions. This trend has become even more pronounced in recent years, as the percentage increase of the immigrant population in suburban communities has exceeded the increase in the District. Because of these demographic trends, small providers are being increasingly pressed to do work in neighboring jurisdictions. Moreover, in the last few years, a number of local initiatives targeting immigrants in the suburbs put further pressure on legal services providers in the District to respond.⁵⁴⁴ Absent a large influx of resources for these providers, it may be increasingly difficult for them to serve the District's immigrant communities when an increasingly larger percentage of immigration-related legal issues involve non-District residents.

People seeking assistance with immigration issues face an additional barrier that is not present to the same extent in other subject areas. Many

Immigrants come to the District from many countries... Such a melting pot of customs, languages, religions and social outlooks creates a complex and diversified set of issues and needs.

providers that specialize in immigration issues charge small fees for their services. In addition, the federal government does not waive immigration processing fees for applicants who are indigent. For instance, the Department of Homeland Security charges \$585 to file a notice of appeal, and most applicants must pay over \$1,000 to file an application to adjust one's status to that of a permanent resident.⁵⁴⁵ By contrast the DC Courts waive filing fees for people who cannot afford it. Most legal services providers cannot absorb these fees so they have to pass these costs on to the clients.

Due to the growing need for assistance and limited resources, many providers are forced to turn away requests for immigration assistance. Four providers reported immigration as the most frequently turned away subject area. Notably, three providers specializing in immigration assistance reported turning away requests, citing lack of resources as a reason.

Our survey asked legal services providers to report the number of District residents who were provided full representation in different subject areas. The 24 providers that responded to this question provided full representation to about 600 residents in immigration cases. This figure reveals the strain upon the legal services community. Two providers handled roughly two-thirds of these matters; they noted that a lack of resources forced them to turn away requests for legal assistance.

Given the foregoing, it is not surprising that seven providers identified immigration issues as an under-addressed need confronting city residents. Status/classification matters were most frequently cited as cases in which the need for legal assistance is not being met. Providers noted that many people eligible for relief under the immigration laws do not know their rights, much less have access to an attorney. Providers also noted that certain immigration cases may be particularly difficult due to the client's LEP status or because certain case types are time consuming or expensive to prepare.

Providers expressed concern that the need for legal assistance with immigration matters will increase in the future because more immigrants will settle in the DC area. One provider specializing in immigration noted it

has already experienced an increase in LEP clients. In addition, should comprehensive immigration reform ever become law, it will undoubtedly unleash a flood of demand for immigration-related assistance.

b. Other Legal Issues Confronting Immigrants and Challenges Faced by Providers. The legal needs confronting low-income immigrants include much more than just immigration issues; these immigrants face many of the same legal difficulties as other low-income groups. For example, providers that specialize in serving immigrant communities also received requests for assistance in housing, employment, public benefits, and family law matters, among other areas. Furthermore, immigration-related issues are often intertwined with other legal issues. For domestic violence survivors, for instance, immigration relief may be the key to escaping their abusers.

Discrimination poses a significant threat as well. Immigrants are highly vulnerable to unfair employment practices. Those who are discriminated against, mistreated or fired for invalid reasons may not know where to turn or what they can do to correct the situation. They may also fear retaliation based on their immigration status.

The close linkage between other civil legal issues and one's immigration status makes it increasingly challenging for legal services providers to address and anticipate all the collateral issues that could arise when serving immigrants. For example, a public benefits attorney may help an immigrant get health care coverage, but that victory may be harmful in the person's immigration case because the person could be deemed a public charge. The need for understanding the intricacies of immigration law extends beyond those providers that focus on getting clients permanent residence, citizenship or asylum. Legal services attorneys without an immigration law background should be mindful to consult with someone who is knowledgeable, so that he or she does not inadvertently hurt a client's immigration case.

As mentioned in Section V.A.3.b.i, providers also face challenges in recruiting and retaining bilingual and bicultural staff and getting qualified interpreters when needed. Legal services staff seeking to provide immigra-

Outreach strategies also are more likely to succeed when organized and implemented by staff members with knowledge of immigrant communities. The process of gaining trust can be nearly impossible if outreach approaches are not based in a deep understanding of the community's needs, culture and language.

tion assistance frequently need to ask about intimate details of the client's personal life and/or review financial records to develop the case. Immigrants who are new to this country may be scared about revealing this information unless they feel comfortable with the person who is seeking it. It is more likely that this comfort level can be established when the staff members speak the language and can relate to the situation in the home country. Outreach strategies also are more likely to succeed when organized and implemented by staff members with knowledge of immigrant communities. The process of gaining trust can be nearly impossible if outreach approaches are not based in a deep understanding of the community's needs, culture and language.

In short, our survey revealed that immigrants' legal needs are great and at the same time, largely unmet. With the need for legal services expected only to increase, legal aid providers in the District need additional resources to meet the legal needs of a growing immigrant population.

VII Estimating the Magnitude of Unmet Legal Needs



It is extremely difficult to calculate the precise level of the low-income community's unmet legal needs.⁵⁴⁶ Nationally, studies have indicated that about 80 percent of low-income residents' legal needs are unmet.⁵⁴⁷ Prior studies in the District have estimated that the figure in the District is closer to 90 percent.⁵⁴⁸ Whatever the actual figure, it is clear that the unmet need is substantial. The DC Courts' *pro se* statistics provide one snapshot of the unmet need. For example, in 2005:

- Almost 45 percent of formal probate matters, 98 percent of the small estate matters and 60 percent of the trust matters before the Probate Division of DC Superior Court involved *pro se* plaintiffs.
- About 98 percent of both petitioners and respondents in the Domestic Violence Unit of the DC Superior Court proceeded *pro se*.
- Approximately 77 percent of plaintiffs in divorce/custody/miscellaneous cases in Family Court were *pro se*.
- More than 98 percent of respondents in paternity and child support cases were *pro se*.
- About 97 percent of defendants who had to appear in Landlord/Tenant Court were *pro se*.⁵⁴⁹

We recognize that not everyone wants or needs full representation to address his or her legal problems. Many issues presumably could be resolved through brief advice or by giving the person materials relevant to the issue. Nonetheless, the *pro se* statistics from the DC Superior Court, which take into account representation from legal services providers, government attorneys and pro bono lawyers, indicate that thousands of people enter the DC Courts every year without a lawyer at their side. It is difficult to imagine a person of means making the same decision if given the choice.

Nonetheless, the pro se statistics from the Superior Court, which take into account representation from legal services providers, government attorneys and pro bono lawyers, indicate that thousands of people enter the DC Courts every year without a lawyer at their side. It is difficult to imagine a person of means making the same decision if given the choice.

Furthermore, it is likely that the matters that actually make it into court represent only a fraction of the existing legal needs in the community. As our study found, community-based organizations almost universally felt that the low-income community lacks knowledge about their legal rights, and an understanding of how to vindicate those rights. It is unlikely that those who do not know about their rights will ever go to court to seek resolution of a legal matter. Even those people who know about their rights and legal resources may be reluctant to bring matters to court without the advice or presence of counsel.⁵⁵⁰

Lastly, as mentioned throughout this report, lawyers do much more than advocate on behalf of individual clients in court. Among other things, they can educate individuals about their rights, provide advice and counsel and advocate for laws and policies that benefit the entire low-income community. Any estimation of the magnitude of unmet legal need would be incomplete without acknowledging the significant need for such services by the District's poorest residents.

In short, the unmet legal needs of District residents, no matter how calculated, remain vast. The ability of legal services network to respond is limited. Even with a growing legal services network, there are still far too few attorneys available to meet the civil legal needs of low-income District residents. As stated by the Chief Judge of the DC Court of Appeals, Eric T. Washington,

The DC Courts' vision of being an institution that is "Open to all, trusted by all, with justice for all" will never be fully realized as long as so many of our low- and moderate-income residents lack adequate civil legal representation to help protect their basic rights and liberties.⁵⁵¹

VIII Challenges Facing the Legal Services Network—A Call to Action



Our survey found that low-income residents have unmet legal needs in every subject area and that the legal services network faces numerous challenges in meeting these needs. While a lack of resources is at the root of many of these challenges, it is not the only one. It will take the collective effort of all involved—including legal services providers, government agencies, courts, law firms, bar members, law schools and foundations to tackle the challenges we identify below.

A. Increase Staff of Legal Services Providers

Providers cannot afford to hire nearly the number of staff necessary to meet the needs of the client community. The staff shortage is particularly acute for lawyers with foreign language skills. As a result, each provider has to restrict the ways in which clients can get help. Indeed, when asked to identify the three most common reasons they had to turn away clients, providers most often responded that the issue fell outside of their mission/expertise; had inadequate resources to handle the matter; and the person making the request fell outside the providers' income or eligibility guidelines. *See* Chart No. 14, "Top Three Reasons Legal Services Providers Gave for Turning Away Requests for Legal Services."

Although the reasons may be different, the cause is essentially the same—a lack of resources, and therefore staff, is a significant factor in limiting the areas of practice, imposing income restrictions, and creating other eligibility guidelines.

The relatively small number of lawyers cuts across sub-

ject areas. Even when the resources of all the providers are combined, there are still far too few legal services attorneys available to meet clients' needs.

The addition of 31 new lawyers due to the District government's funding has helped the situation. Even when these attorneys are fully integrated into the legal services network, staffing will continue to fall far short of the need. For example, the public funding led to an additional seven lawyers being stationed in Landlord/Tenant Court to provide same day representation. The program estimates it can provide full representation in about 300 cases a year through this program. Other limited services will be available to several hundred more. According to the Landlord/Tenant Court's 2005 *pro se* figures, about 30,000 respondents had to appear in Landlord/Tenant Court because their case was not dismissed prior to the initial court date;⁵⁵² about 675 of these respondents (less than 3 percent) had a lawyer.⁵⁵³ While these new attorneys increase the amount of representation available, far too many low-income litigants still cannot secure a lawyer when they need one.

Given these staffing challenges, it is difficult for these providers to take on larger cases or systemic issues unless they can find *pro bono* lawyers to assist or another organization to serve as co-counsel. It is also difficult to cover cases when someone is out of the office for an extended period of time, and to respond when an issue comes up in the community where a significant number of people urgently need legal information and/or assistance. For example, the network has been slow to respond to the rising number of foreclosures and sub-prime lending problems, and has only

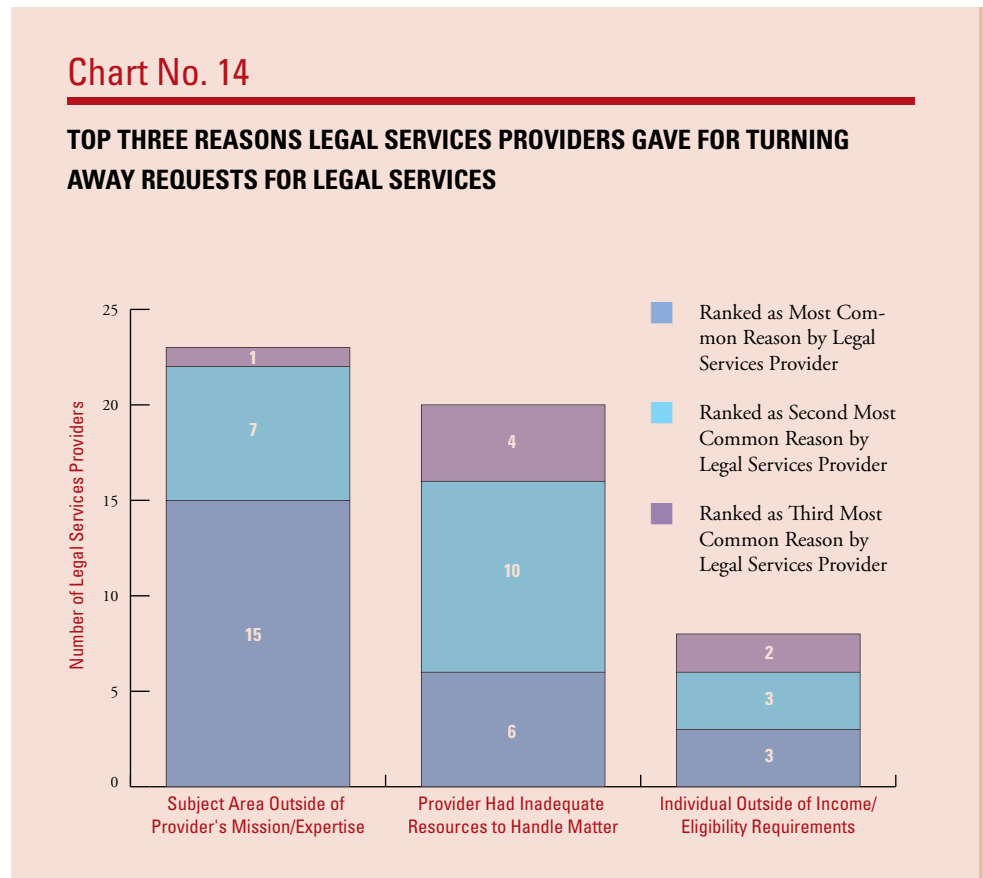
recently begun to address the needs of returning veterans from the wars in Iraq and Afghanistan.⁵⁵⁴ The equation is simple—more legal services attorneys will equal more legal services for low-income residents.

B. Make the Legal Services Delivery System Even More Accessible to the Low-Income Community

1. LARGE NUMBER OF SMALL PROVIDERS

As noted in Section V.A.1, there are many small legal services providers. Generally speaking, this has been due to the creation of new providers to address service delivery gaps. The result is that a provider that focuses on just a few subject areas can develop expertise more quickly. There are, however, some downsides to addressing the needs by having many small providers. It may be confusing to those seeking help, providers may be too thinly staffed to take on large projects, and there may be a duplication of administrative functions. Further, clients frequently have more than one legal problem. They cannot be served efficiently if they must go to more than one provider to get their problems solved, particularly if there is no established mechanism among the providers to coordinate service delivery.

In addition, having many small providers likely results in an emphasis on cases that can be resolved through brief advice rather than full representa-



tion. In an office with a few lawyers, full representation may consume a disproportionately large share of resources. Even routine litigation in DC Superior Court on behalf of an individual litigant can be time consuming.

It is natural to take the case that can be handled today without litigation or the problem that can be solved with a modest amount of work in a familiar forum, or to give *pro se* support. A small program cannot reject the overwhelming number of cases that come to it so that it can pursue an active litigation docket. These factors may push staff to take matters requiring only short-term assistance.

While not everybody needs (or wants) full representation, the legal services network should be able to provide full representation when needed. Simply put, client needs, rather than the structure of the network should dictate the type of services rendered.

2. LOGISTICAL CONSTRAINTS

There are also some structural impediments to service delivery that are driven in large part by resource constraints. Some providers do not allow walk-in intake. Those that do limit intake hours to certain days or times. Most providers are located downtown, which is not where most clients are lo-

cated. Traveling to a provider's office may pose another barrier for people seeking services. Several providers close their intake at various points during the year when volunteers are not as readily available (e.g., during portions of the summer or the holiday season). Clients' problems arise throughout the year and those unfortunate enough to have problems at inopportune times have even fewer options available.

C. Expand Systemic Advocacy

Just as clients with financial means have a range of legal tools available to meet their goals (e.g., ability to seek legislative change or comment on administrative regulations), so too should low-income clients. Changing the underlying conditions in which low-income people have to live, such as increasing the supply of affordable housing, providing medical insurance to qualified individuals and paying workers a living wage, would reduce these residents' legal issues. Lawyers could play a critical role in changing these conditions. However, as our survey found, the press of immediate client needs and the lack of available resources sharply limits the ability of legal services providers to take on systemic matters.⁵⁵⁵

1. LIMITED SYSTEMIC EFFORTS

Our survey asked legal services providers about the percentage of time they spend on various systemic efforts, such as administrative, appellate and legislative advocacy, impact litigation, court reform, community organizing, outreach and education and community and economic development. While many providers work in some of these areas, the actual percentage of staff time spent was quite small. For instance:

- 19 legal services providers do legislative work. Only three reported spending 15 percent or more of their time on legislative matters. These three work on issues related to domestic violence, housing and homelessness and employment.
- 13 legal services providers advocate to affect rulemaking or to reform administrative practices. Of those, only three devoted more than 5 percent of their overall staff time to these efforts. These three groups spend their time on serving immigrant communities, assisting women who have been released from prison and meeting the legal needs of the homeless.
- Seven legal services providers are involved in community organizing. Only one of the seven spends more than 10 percent of its time on these activities. This provider focuses on serving immigrant communities. Other providers work in partnership with community groups that engage in organizing. For example,

Housing Counseling Services helps form tenant associations and attorneys from Bread, WLCH and LAS provide litigation assistance to help preserve affordable housing.

It is the smaller legal services providers that are spending a larger percentage of time on the activities listed above. In 2005, the largest percentage of time spent on legislative work, administrative advocacy and community organizing was by providers with budgets of less than \$700,000 in 2005.⁵⁵⁶ Providers with larger budgets can spend a lower percentage of their staff time on systemic issues and still exceed the amount of time devoted by the smaller providers. Generally speaking, however, the larger providers spend an overwhelming majority of their time on individual representation.

The systemic work of legal services providers is supplemented by pro bono attorneys, national organizations that take on an issue specific to the District, and local organizations whose other legal work assists low-income District residents.⁵⁵⁷ In most cases, however, the providers still must play a significant role because they have a more detailed understanding of the issue and the ability to identify clients affected by the problem.

The decision to pursue more complex or systemic matters can be a difficult choice. It requires the discipline to turn away clients that the program could help in favor of the broader case.⁵⁵⁸ For example, while the investment in litigation that will overcome housing discrimination or credit redlining has the potential for a much greater payoff in the medium- and long-term, it may mean that dozens or even hundreds of clients are not helped in the interim. Almost every single provider, when asked to list the obstacles that prevent it from undertaking more systemic initiatives, stated that the lack of resources limit its efforts.⁵⁵⁹ As stated by one organization,

The needs of our clients are so pressing, and our resources so little, that systemic advocacy always takes a back seat to the immediate needs presented.

Another commented,

[I]t is difficult to devote staff time towards advocating for systemic reform when we do not have adequate staffing levels to meet the growing demand for [individual] services.

The scarcity of funding, and the resulting short staffing, tend to keep providers in a continuous crisis mode, whereby they are responding to overwhelming day-to-day needs rather than engaging in more strategic, long-term, broad-based initiatives.

2. OPPORTUNITIES TO EXPAND SYSTEMIC WORK

But for the resource constraints, systemic initiatives that could be undertaken on behalf of the low-income community are limitless. In addition to those noted throughout this report, providers also reported a desire to:

- Address the impact of housing displacement and pursue the deconcentration of poverty through broad-based strategies, including race based civil rights claims, the development of affordable housing, community benefits agreements, zoning challenges and other strategies;
- Attack predatory credit practices;
- Ensure that all workers in the District have an adequate level of employer funded health insurance;
- Improve District laws regarding HIV and medical confidentiality;
- Advocate for the DC government's effective implementation of the DC Language Access Act so that LEP residents have equal access to public services, programs and activities; and
- Address court-related problems, including the failure to hear matters in a timely fashion.

Increasing the ability for legal services providers to pursue systemic advocacy projects, especially by those with the most resources and potentially the largest platform to influence, would do much to address many concerns underpinning the needs of District residents. This work does not result in changes overnight, and measuring success is more difficult in comparison to representing an individual client. However, adding to this capacity will help ensure that systemic problems get systemic remedies, rather than trying to prevent client after client from falling through the same hole.

The Commission and the Consortium have been developing a proposal to increase the legal services network's ability to do systemic work. Increasing this capacity will require additional staff at legal services providers, as well as collaboration among community-based organizations, national advocacy groups and area law firms willing to do this type of work pro bono.

D. Expand Pro Bono While Ensuring Effective and Efficient Use

Expanding pro bono activity is an important way to serve people who cannot afford counsel. Even with all of the pro bono work that takes place in the District, there is still plenty of room and need for more. Pro bono is an expandable resource, whereas it is unlikely that there will ever be enough full-time legal services attorneys to meet all of the unmet legal needs. Increasing this critical resource presents challenges that the legal services network should address head-on.

First, increasing pro bono requires a significant investment of resources by the legal services community. In survey responses, legal services providers commented frequently on how critical it is for pro bono attorneys to get adequate training, supervision and mentoring. While many law firms are able to provide in-house support in particular types of cases, other firms and those attorneys who do not work for law firms may need to rely on legal services providers. The addition of 31 new legal services lawyers due to the District government's funding means that are additional mentors for pro bono attorneys. More legal services attorneys are needed to leverage an even greater amount of pro bono work.

Almost every single provider, when asked to list the obstacles that prevent it from undertaking more systemic initiatives, stated that the lack of resources limit its efforts. As stated by one organization, “The needs of our clients are so pressing, and our resources so little, that systemic advocacy always takes a back seat to the immediate needs presented.”

Second, the private bar should expand its commitment to pro bono even further. We understand that the willingness of attorneys and law firms to volunteer for projects is influenced by other business factors. For instance, the increase in associate salaries in the largest law firms over the years has resulted in an increase in billable hour requirements. Nationally, this increase has created concern that it is becoming harder for associates to do pro bono work.⁵⁶⁰ Fortunately, the DC Bar Pro Bono Program's Pro Bono Initiative reports indicate that this has not been a problem locally.

In addition, some cases might be so controversial or at odds with firm clients or potential clients that it may be difficult to find a law firm willing to take them. For example, with the current housing and credit crisis, foreclosure cases are hard to place with the larger law firms because many represent banks.

It is incumbent on the private bar to respond forcefully to situations where pro bono seems to be limited by such factors. The response can include looking to other segments of the bar for assistance to encouraging law firm and bar leaders to speak out about the need for pro bono services in a particular area.

Once pro bono support is obtained, the effective and efficient use of the resources available is crucial. Many of the legal issues of those living in poverty are specialty areas that take time to learn. For instance, it may be difficult for a lawyer new to public benefits or housing law to negotiate the nuances of the Medicaid regulations or navigate through the rules governing public housing tenancies. On the other hand, there are other areas, such as contract matters, where pro bono lawyers do have the needed expertise right away. For this reason, the legal services network should carefully analyze the areas of poverty law work and develop methods for using pro bono lawyers that are appropriate for different needs.

Since the supply of legal services lawyers is limited, it is important to use that limited resource in a way that maximizes pro bono participation. These ways include, but are not limited to, using pro bono lawyers in group/clinic settings so that a provider can set aside a particular time period to provide assistance to multiple lawyers. For more discrete matters, setting up systems to place several cases at once or encouraging repeat volunteers to develop expertise in a subject area, are some strategies for achieving efficiencies.⁵⁶¹ In addition, in an effort to assist pro bono attorneys, the legal services network has developed the website <http://www.probononet.org> so that some of the commonly used materials in a particular subject area (*e.g.*, pleadings, briefs and case law citations) are available on-line.

Law firms can continue to play an important role in providing training and mentoring for pro bono work. Firms should consider specializing in particular poverty

law areas so they can provide in-house expertise to pro bono attorneys taking on cases. Lawyers who have recently completed rotations at legal services providers may be ideally suited to take on a mentorship role at the firm; public service counsels at law firms can and do play this role and can encourage others in the firm to take on this responsibility. As law firms develop expertise in particular areas, it may be appropriate for firms to share their expertise with lawyers in other firms.

Legal services providers can also take steps to mobilize additional pro bono resources. Some legal services providers assign a full or part-time staff member to be the pro bono coordinator to handle many of the issues related to assigning cases and answering basic questions. As one provider commented:

The key to successful pro bono attorneys is having legal services staff solely devoted to placement and supervision of pro bono attorneys... [T]here is so much work that goes into it—making sure cases are placed with people and firms who can handle them; staying on top of the attorneys to make sure that the pro bono cases don't get pushed to the back of the line in favor of paying clients; making sure they are adequately staffed and managed, etc... We've tried it both ways, and without a dedicated pro bono coordinator, the results were far less impressive, and often, we had to come in and take cases back over at a point when they had become a crisis. With a pro bono coordinator on top of things, we never reach that point.

However, smaller legal services programs may not have the resources to devote to this type of position. For these providers, it may be more effective to collaborate with other providers that have existing pro bono placement programs, to share a pro bono coordinator or to increase co-counsel relationships with law firms.

Increasing the use of co-counsel relationships between legal services providers and law firms can make for an effective pro bono partnership, particularly in large cases. Law firms and legal services providers each have areas of expertise, and a co-counseling relationship creates mentoring opportunities and a chance to appreciate the hardships and skills that each has. For instance, private practice lawyers are likely to have resources unavailable to legal services providers, expertise in litigating complex matters and a fresh set of eyes to bring to a problem. The providers have experience working with local officials who may be able to address the matter, knowledge of their client base and an in-depth understanding of the systemic issue.

In short, the private bar has an important role in civil legal services delivery, and it can, and should, make a greater

commitment to the provision of free legal services. Pro bono works best in an environment where there are stable and effective staffed programs that can identify cases and where there are effective systems in place to provide training, mentoring and support. The easier it is for lawyers and law students to tap into volunteer opportunities and receive needed training and mentoring, the more likely they will increase pro bono efforts.

In expanding pro bono assistance, the challenge is to use this resource efficiently and effectively—from the perspectives of the providers that train and mentor those performing pro bono work, the volunteers themselves and ultimately, the clients who are being assisted.

E. Increase Outreach and Community Education to the Low-Income Community

As discussed in Section IV.C, a consistent theme of our interviews with social services organizations is that low-income residents suffer from a lack of knowledge about their legal rights and the availability of legal services. This lack of knowledge is particularly acute in areas of highly concentrated poverty. As a result, people living in poverty may tolerate illegal housing conditions, improper or erroneous denial of public benefits or other situations because they do not know that a lawyer can make a difference.

The social services organizations had a litany of ideas for how the legal services network could increase outreach to the low-income community, particularly those who face additional barriers, such as LEP status or who are disabled. These steps include informing the social services organizations themselves about the legal services that are available since these organizations can serve as a bridge between clients and the legal services lawyers; training these organizations on new legal developments; establishing a centralized hotline or office to refer all prospective clients, regardless of subject area; distributing flyers in grocery stores, schools, churches, health care clinics and other places where low-income residents are likely to congregate; and using radio and television to inform residents about the availability of services.

Legal services providers are aware of all these avenues, but are not waging an all out community education and outreach campaign for a very simple reason—they fear getting overwhelmed with the resulting response. In our meetings with legal services attorneys, we heard a common question: Why should we increase outreach when we cannot even serve all the people who are already coming to our door? There is a legitimate concern that conducting a large outreach campaign would raise expectations in the community that

cannot be met until there are many more lawyers available to do the work. In a related vein, there are concerns about using attorney time to do community education work when those attorneys could spend their time on individual cases.

The addition of staff to the legal services network should make it easier to increase outreach. Moreover, by educating the low-income community about their rights and encouraging them to vindicate them, providers may learn of matters earlier in the process so issues can be addressed before they turn into full-fledged cases.

In expanding pro bono assistance, the challenge is to use this resource efficiently and effectively—from the perspectives of the providers that train and mentor those performing pro bono work, the volunteers themselves and ultimately, the clients who are being assisted.

F. Expand Partnerships and Outreach to Community-Based Organizations

In addition to noting that low-income residents were generally unaware of their legal rights, the community-based organizations themselves acknowledged that they did not know about the number of legal services providers in the District or the most effective way to get legal services. Community-based organizations are an important bridge to the legal services community so it is critical that they be made more aware of the legal services network. As noted in Section V.A.2, collaborations between legal and social services providers are on the rise, which should help address this situation. But more remains to be done. Even in those instances when a formal partnership or collaboration is not feasible, simply informing the community-based organizations about legal services providers should result in more low-income residents learning about where they can get legal assistance.

G. Strengthen Legal Services Network's Capacity to Serve Populations that are Difficult to Reach

As noted above, the low-income community's lack of knowledge about legal rights is a significant problem. Moreover, many of the District's poorest residents are difficult to reach because of other issues. Some have physical or cognitive disabilities. Some are LEP or have poor literacy skills. Others have limited mobility because they are elderly, infirm or incarcerated. For these individuals, the barriers to equal access to justice are heightened substantially. So too are the challenges that providers must confront in meeting their needs. Written self-help materials are of no use to those who cannot read them. Free legal assistance is of little use to those who cannot go to a provider's office or understand the language in which the services are delivered. The diversity and hardships that exist among various segments of the low-income community make it important that the legal services network tailor its outreach, education and service delivery methods to meet these residents' unique needs. The creation of a shared legal interpreter bank to meet linguistic needs is one such example of an important first step, but it is just that—a first step.

Many legal services providers have developed expertise in serving one or more of these groups. Their collective expertise needs to be harnessed and disseminated to the rest of the network through the provision of training and by spearheading new initiatives. Properly serving each of these difficult to reach populations is a challenge that will likely be resource intensive and require creative approaches. It is, however, necessary to ensure that the most vulnerable members of our community have meaningful access to our civil justice system.

H. Enhance Training

There are a large number of training opportunities available to nonprofit organizations that could substantially enhance legal services providers' collective skills and efficiency, but our survey indicates cost is a barrier. A majority of survey respondents would like to provide general management training to managers, but cannot afford to do so. Computer training and additional assistance with budgeting for managers were also mentioned. Managers play a critical role in developing the organization and line staff so managers must have the necessary tools. It is extremely difficult to find a manager who comes with all the skills to be successful—fundraiser, supervisor, mentor and motivator among others. By receiving training in key areas, managers in the legal services community can develop or refine their skills to take

their organization to the next level. Economies of scale may be achieved by having representatives from multiple organizations attend the same session or having a consultant work with a number of organizations at once.

Organizations would like to provide advanced training (both substantive and skills-based) to their staff attorneys, and send them to more local and national conferences. Attending national conferences can be particularly useful for staff to find out about advocacy efforts in other parts of the country and to meet their counterparts in other organizations.

Respondents said that support staff would benefit from computer software and data management training. Law students and pro bono attorneys could benefit from additional substantive law training sessions.

As with many of these areas, the provision of training is an on-going challenge and one that can get pushed to the side due to the press of client needs. Over the long-term, however, a robust training program for all staff will result in a legal services network that is even more efficient and skilled than the one we have today.

I. Keep up with Technological Change

The lack of technological infrastructure and support has long been a concern of legal services providers.⁵⁶² Items that many lawyers in the private sector take for granted and that help them increase their efficiency, such as laptop computers, wireless handhelds and sophisticated case management systems, are not always present in legal services offices. For example, during the listening session that the DC Bar Foundation and the Commission held with staff attorneys, several commented that they have difficulty reaching managers who are supervising other attorneys in court or who are off-site.⁵⁶³ This problem can be alleviated somewhat if managers have access to wireless handhelds and various other technologies readily available in the private sector. Having laptop computers with Internet access and sophisticated case management systems will allow staff to go off-site to conduct intake and do conflicts checks immediately rather than having to wait until getting back to the office. While appropriate technology is certainly not a substitute for a well-trained staff, it makes the day-to-day practice of law easier and more efficient.

Fortunately, the increase in public and IOLTA funding has helped the situation. The challenge with technology, however, is that it is always evolving; what is state of the art today may be antiquated in five years. Providers are forced to choose between investing in infrastructure and hiring additional staff. Given the large need for additional representation, there is pressure to hire as many lawyers as possible and address infrastructure shortcomings later. While this may be

an adequate short-term solution, the increasing role of technology in the practice of law makes such an approach unsustainable over the long-term.

J. Improve Data Collection

While collecting information for this report, we identified another structural limitation of the legal services network: data collection. There is no data collection method used consistently throughout the network; some providers keep information by calendar year, while others use various fiscal years. In addition, records kept by individual providers vary in significant ways. Almost every provider that responded to our survey indicated that they did not track at least some of the data requested. Information that was tracked frequently had to be compiled by hand, rather than electronically.

Among other things, one or more providers reported that they did not track:

- Number of requests for legal assistance.
- Subject areas of requests.
- Case types for which requests were turned away.
- Number of District residents served.
- Number of referrals received.
- How referrals were handled.

It is doubtful that these data collection issues affect the quality of individual representation given by providers and, indeed, one could hardly disagree with the need to prioritize individual client service over administrative recordkeeping. Nevertheless, the disparate and limited records make it difficult to conduct a comprehensive analysis of the system.

In the past year, the DC Bar Foundation has made a concerted effort to standardize providers' data collection in a few key areas. Over time, this effort should yield fruitful results.

IX Conclusion



In the past few years, much has changed for the good for District residents seeking civil legal services. The District government has put \$3.2 million in local funding in both fiscal years 2007 and 2008 to support the hiring of 31 new legal services lawyers and to assist legal services lawyers in paying off their educational loans. These lawyers are spread throughout the city so that they are closer to people in need and can better understand the community they serve. To take just one example, the number of legal services lawyers working east of the Anacostia River more than doubled due to the public funding. The funding is establishing a groundbreaking shared legal interpreter bank so that the District's LEP residents can communicate more easily with legal services providers. As a result, a significant barrier preventing equal access to our justice system will be reduced. The District government also deserves credit for establishing a loan repayment program for legal services lawyers so that lawyers with high debt levels can remain in legal services work.

The legal services network also strengthened its infrastructure and added more staff due to an increase in funding from the DC Bar Foundation in fiscal years 2006 and 2007. These increases were due to the rise in interest rates nationally that has benefited the DC Bar Foundation's IOLTA program, and from the DC Bar Foundation's work in encouraging banks to pay interest rates on IOLTA accounts comparable to the rates paid to commercial clients. The decline in interest rates in late 2007 and into 2008, however, raises a question of whether these increases are sustainable over the long term.

As described in Section V.A of this report, the legal services network is fortunate to have a diverse stream of funds that come from both public and private sources, such as law firms, IOLTA, the District government, foundations and individual donations. The public and private sectors share the responsibility to continue this funding and increase it over time in order for the network to reach a broader segment of our community. It is particularly important that recent funding gains from the District government in support of civil legal services remain in place so that the new programs that have started can become a vital part of the communities in which they are located.

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Now, the bad news. Despite unprecedented economic prosperity in the District, poverty is on the rise and the gap between the richest and the poorest in our community shows no sign of closing. The increase in real estate prices has pushed out long-time residents, lessened the availability of affordable housing and forced more people to rely on the District's social services safety net. It has also given rise to scam artists trying to take advantage of residents in desperate financial situations.

The population of particular demographic groups that face heightened barriers entering and navigating our civil justice system, such as immigrants, people who are elderly and war veterans who are disabled, are on the rise. The legal services network will therefore face additional challenges in reaching and serving these groups.

Our survey found legal services providers turned away people in every subject area or gave less assistance than needed due to a lack of capacity. This will remain the case even after the lawyers hired with the public money have been fully integrated into their programs. Those low-income individuals who were turned away from one provider may have tried to get assistance with another, oftentimes with the same result. Some may have given up seeking assistance and gone into court by themselves—something a person with better means is unlikely to do. Further, as described in Section VIII, the legal services network still faces numerous other challenges—some which affect basic services delivery as well as the ability to make lasting change.

While there have been significant strides in recent years to ensure equal access to justice for all, we hope this report provides a snapshot of where we stand as a community and illustrates just how much more remains to be done. As then ABA President and future Supreme Court Justice Lewis Powell has stated:

Equal justice under law is not merely a caption on the façade of the Supreme Court building; it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists.... it is fundamental that justice should be the same, in substance and availability, without regard to economic status.⁵⁶⁴

The quest for equal access to justice is not just a problem that can or should be faced by those in the legal community. It will take all of us, working together, to ensure that “Equal Justice Under Law” has real meaning to low-income residents in the District of Columbia.

Endnotes

- ¹ In this report, individuals are “poor” or “in poverty” if their income is below 100 percent of the federal poverty threshold and “low-income” if their income is below 200 percent of the federal poverty threshold. In 2007, the federal poverty threshold for an individual was \$10,587; for a family of four, \$21,201. *See* U.S. Census Bureau, “Preliminary Estimates of Weighted Average Poverty Thresholds for 2007,” *available at* <http://www.census.gov/hhes/www/poverty/threshld/07prelim.html>.
- ² In this report, the “legal services network” includes legal services providers, pro bono attorneys, the courts, DC Bar, DC Bar Foundation, law school clinics and government agencies dedicated to meeting low-income residents’ legal needs.
- ³ In this report, “legal services providers” and “providers” are nonprofit organizations where attorneys work full-time on behalf of the poor.
- ⁴ In this report, the phrase “estate planning” includes advance medical directives, such as health care and financial powers of attorney, living wills, guardianships or conservatorships and other legal issues related to planning for incapacity and death.
- ⁵ This program, established by the DC Court of Appeals, remits to the DC Bar Foundation interest generated from trust accounts holding client funds too small in amount or held for too short a duration to generate any net interest for a particular client, for distribution to legal services programs that benefit the District’s low-income residents.
- ⁶ This report considers people to be LEP if they state on the Census questionnaire that they speak a language other than English at home and speak English less than “very well.”
- ⁷ Statement of Eric T. Washington Before the Council’s Committee of the Whole (Apr. 11, 2006).
- ⁸ *See supra* note 1 for a definition of “low-income.”
- ⁹ In certain civil cases, when the government initiates a proceeding in which personal liberty is at stake, counsel is provided either by statute or pursuant to judicial precedent. For example, every person who is subject to civil commitment or is the subject of an abuse and neglect proceeding is provided a lawyer at government expense if he or she is indigent.
- ¹⁰ *See, e.g.*, The Women’s Law Center of Maryland, Inc., “Families in Transition: A Follow-up Study Exploring Family Law Issues in Maryland” (Dec. 2006); The William E. Morris Institute For Justice, “Injustice In No Time: The Experience of Tenants in Mari-copa County Justice Courts” (Jun. 2005); U.S. Commission on International Religious Freedom, “Report on Asylum Seekers in Expedited Removal,” at 239 (Feb. 2005); Donald Kerwin, “Charitable Legal Programs for Immigrants: What They Do, Why They Matter, and How They Can Be Expanded,” Immigration Briefings, No. 04-06, at 6 (Jun. 2004); Lawyer’s Committee for Better Housing, “No Time for Justice: A Study of Chicago’s Eviction Court” (Dec. 2003); Paula Hannaford-Agor & Nicole Mott, “Research on Self-Represented Litigation, Preliminary Results and Methodological Considerations,” 24 *The Justice System Journal* 163, 171 (2003); Jane Murphy, “Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women,” 11 *Am. U.J. Gender Soc. Pol’y & L.* 499, 511-12 (2003); Andrew I. Schoenholtz & Jonathan Jacobs, “The State of Asylum Representation: Ideas for Change,” 16 *Geo. Immigr. L.J.* 739 (2002); Maurice Emsellem & Monica Halas, “Representation of Claimants at Unemployment Compensation Proceedings: Identifying Models and Proposed Solutions,” 29 *U. Mich. J.L. Reform* 289 (1996); Suzanne E. Elwell & Christopher D. Carlson, “The Iowa Small Claims Court: An Empirical Analysis,” 75 *Iowa L. Rev.* 433, 511 (1990).
- ¹¹ Carroll Seron, *et al.*, “The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City’s Housing Court: Results of a Randomized Experiment,” 35 *Law & Soc’y Rev.* 419 (2001).
- ¹² By “pro bono,” we mean attorneys in the private sector who represent low-income clients without charging a fee.
- ¹³ *See generally*, Timothy K. Kelso, *et al.*, “The Economic Impact of Legal Aid of Nebraska 2003” (Jun. 2004); New York State Department of Social Services, Office of Program Planning, Analysis and Development and Office of Shelter and Supported Housing Programs, “The Homelessness Prevention Program Outcome and Effectiveness 1990” (1990); Liz Elwart, *et al.*, “Increasing Access to Restraining Orders for Low-Income Victims of Domestic Violence: A Cost Benefit Analysis of the Proposed Domestic Abuse Grant Program” (Dec. 2006).
- ¹⁴ New York State Department of Social Services, *supra* note 13, at 23.
- ¹⁵ *Id.* at 23.
- ¹⁶ Elwart, *supra* note 13, at Executive Summary (ii) and 49.
- ¹⁷ Kelso, *supra* note 13, at 5.
- ¹⁸ *See* Kelso, *supra* note 13, at 8. *See also* New York State Department of Social Services, *supra* note 13, at 3, 23 (New York’s assessment of the legal services provided by its Homelessness Prevention Program reported that the program “returns four dollars for every dollar of public funds invested,” but noted that that amount understated the “total benefit” of the program).
- ¹⁹ Robert Echols, “State Legal Needs Studies Point to ‘Justice Gap,’” *Dialogue* (Summer 2005).
- ²⁰ *See* Appendix A (summarizing studies performed in the District).
- ²¹ DC Bar Foundation, “Civil Legal Services Delivery in the District of Columbia,” at 10, 14, 16-17 (2003).
- ²² *See* Appendix B (attaching a copy of the survey) and Appendix C (listing the organizations that completed the survey). In addition, we gave the six law school clinical programs in the District a much shorter set of questions.
- ²³ *See* Appendix D (copy of the data collection form).
- ²⁴ *See* Appendix E (listing the organizations that completed forms). For a more detailed discussion of the data collection results, *see* Spotlight on Data Collection Results, *infra*, in Section VI.
- ²⁵ *See* Appendix F (listing the community-based organizations interviewed by the Commission).
- ²⁶ For summaries of these sessions, *see* DC Bar Foundation, “DC Bar Foundation Public Funding Listening Sessions Report,” *available at* <http://www.dccbarfoundation.org/2006ListeningSessionsSummary.htm>
- ²⁷ *See* ABA, Standing Committee on Legal Aid and Indigent Defendants, “Standards for the Provision of Civil Legal Aid” (2006); LSC, “Legal Services Corporation Performance Criteria” (2007).
- ²⁸ *See, e.g.*, National Legal Aid and Defender Association, “It’s the Salaries, Stupid!... and Much More: The Developing Crisis in the Delivery of Legal Aid” (2007); The Chicago Bar Foundation & The Illinois Coalition for Equal Justice, “Investing in Justice: A Framework for Effective Recruitment and Retention of Illinois Legal Aid Attorneys”

- (Nov. 2006), *available at* <http://www.chicagobarfoundation.org/documents/Retention-StudyFINAL.pdf>.
- ²⁹ While this report discusses pro bono work, the data on which this report rests does not analyze the capacity of pro bono services by lawyers and law firms to fill existing gaps in services.
- ³⁰ U.S. Census Bureau, 2006 American Community Survey, at Table S1701, *available at* <http://factfinder.census.gov>
- ³¹ DC Fiscal Policy Institute, “DC’s Two Economies: Many Residents Are Falling Behind,” at 3, 19-20 (Oct. 24, 2007) (using the Current Population Survey data), *available at* <http://www.dcfpi.org>.
- ³² U.S. Census Bureau, *supra* note 30.
- ³³ Mississippi had the highest percentage.
- ³⁴ U.S. Census Bureau, 2006 American Community Survey, at Table R1704, *available at* <http://factfinder.census.gov>
- ³⁵ U.S. Census Bureau, 2006 American Community Survey, at Table R1703, *available at* <http://factfinder.census.gov>
- ³⁶ The poverty threshold was developed in the 1960s and assumes that families spend one-third of their income on food. Nancy K. Cauthen & Sarah Fass, National Center for Children in Poverty, Columbia University, “Measuring Income and Poverty in the United States,” at 2 (Apr. 2007), *available at* <http://www.nccp.org/publications>. Its creators estimated the cost of a minimal diet and multiplied that cost by three. It has been updated annually for inflation, but no other adjustments have been made. *Id.* It is based on outdated assumptions that fail to reflect changes in spending patterns, including the growing need for and cost of child care now that more women are working outside the home, and increases in the costs of housing, health care and other basic necessities. Diana Pearce, “The Self-Sufficiency Standard for the Washington, DC Metropolitan Area 2005,” at 2 (Sept. 2005), *available at* <http://www.six-strategies.org/files/FINAL%20DC%20SSS.pdf>. Further, the poverty level is based solely on income and does not take into account other factors affecting economic well-being, such as debt. Cauthen & Fass, “Measuring Income and Poverty in the United States,” at 1. Of particular significance to people living in the District, the same thresholds are used throughout the continental United States so the poverty level ignores geographic differences in the cost of living. *Id.*
- ³⁷ U.S. Census Bureau, Poverty Thresholds 2006, *available at* <http://www.census.gov/hhes/www/poverty/threshld/thresh06.html>.
- ³⁸ Pearce, *supra* note 36, at 5-9, Appendix at 57. Necessities include housing, child care, food, transportation, health care and other miscellaneous expenses such as clothing, shoes, household items and phone service. *Id.*
- ³⁹ Cauthen & Fass, *supra* note 36; Martha Ross & Brooke DeRensiz, The Brookings Institution, “Reducing Poverty in Washington, DC and Rebuilding the Middle Class From Within,” at iii (Mar. 2007); Neil deMause & Steve Rendall, “The Poor Will Always Be With Us: Just Not on the TV News,” at 1 (Sept. 7, 2007).
- ⁴⁰ U.S. Census Bureau, Current Population Survey, 2007 Annual Social and Economic Supplement, Table POV 46 *available at* www.census.gov.
- ⁴¹ Census 2000, Advanced Query System (on file with the Commission).
- ⁴² Ed Lazere, DC Fiscal Policy Institute, “DC’s Two Economies: Many Residents are Falling Behind Despite the City’s Revitalization,” at 3 (Oct. 2007) (“An analysis of 59 large U.S. cities by The Brookings Institution found that income inequality in DC was greater in 2006 than in every city except Atlanta and Tampa.”)
- ⁴³ Ed Lazere, DC Fiscal Policy Institute, “Income Inequality Grew Dramatically in DC Over the Past Two Decades,” at 1 (Jan. 25, 2006) (reporting on a study, “Pulling Apart: A State-by-State Analysis of Income Trends,” prepared by the Center on Budget and Policy Priorities and the Economic Policy Institute).
- ⁴⁴ *Id.* at 2.
- ⁴⁵ Angie Rodgers & Ed Lazere, DC Fiscal Policy Institute, “Income Inequality in the District of Columbia Is Wider than in Any Major U.S. City,” at 9-10 (Jul. 2004) (noting that the isolation of low-income families is problematic because, among other things, “low-income communities risk losing support for government finance and services that address the needs of the poor because the geographic isolation erodes the awareness of the wider populace to their issues.”)
- ⁴⁶ *Id.* at 9.
- ⁴⁷ Angie Rodgers, DC Fiscal Policy Institute, “Squeezed Out: The Worsening Shortage of Affordable Housing for Low-Income DC Households,” at 1-2 (Jan. 13, 2005).
- ⁴⁸ Joy Phillips & Robert Beasley, DC Office of Planning, “Income and Poverty in the District of Columbia: 1990-2004,” at 2 (2005).
- ⁴⁹ *Id.*
- ⁵⁰ DC government, Office of Planning, “Census 2000 Key Demographic Indicators” (Sept. 2005), *available at* <http://www.neighborhoodinfodc.org/pdfs/census2000keydemographicindicators.pdf>.
- ⁵¹ The unemployment rates are based on the Department of Labor’s definition of unemployment. As discussed in greater detail in Section VI.C.1.a, *infra*, the definition understates the magnitude of the problem in numerous ways.
- ⁵² Center for Survey Research & Analysis, University of Connecticut, “Civil Legal Needs Among Low-Income Households in Connecticut,” at 5 (Apr. 2003).
- ⁵³ Stacey Rolland, DC Fiscal Policy Institute, “Disparities in the District: Poverty is Major Cause of Social Problems in the District of Columbia,” at 1 (2006), *available at* <http://www.dcfpi.org>.
- ⁵⁴ *Id.* at 2.
- ⁵⁵ *Id.*
- ⁵⁶ *Id.* at 4.
- ⁵⁷ OAG, “The High Cost of Being Poor in the District of Columbia: Financial Products and Services,” at 1 (Apr. 2007). *See also* Matt Fellowes, The Brookings Institution, *et al.*, “The High Cost of Being Poor: Reducing the Costs of Living for Working Families” (Oct. 13, 2006).
- ⁵⁸ OAG Press Release, “DC Attorney General Targets High Cost of Being Poor” (Apr. 26, 2007).
- ⁵⁹ Matt Brouwer, Agency Relations Manager, Capital Area Food Bank. *See also* Poverty Research Institute of Legal Services of New Jersey, “Legal Problems, Legal Needs: The Legal Assistance Gap Facing Lower Income People In New Jersey,” at 10 (2002) (the concern with low-income residents “is that they are less likely to have enough resources to pay, to have the personal connections that facilitate finding an attorney, to have the ability to deal with legal problems without the help of an attorney, or even to recognize when they may need legal help.”).
- ⁶⁰ *See* Center for Survey Research & Analysis, *supra* note 52 at 24 (Apr. 2003) (“Low-income households have difficulty determining if they have a legal issue or what sources they

- can use for legal assistance.”); Echols, *supra* note 19, at 34-35.
- ⁶¹ See, e.g., Center for Survey Research & Analysis, *Id.* at 22 (Apr. 2003) (citing lack of knowledge as the most common reason); Poverty Research Institute of Legal Services of New Jersey, *supra* note 59, at 37 (“The majority of lower income adults are not aware of free legal services, and fewer are aware of legal referral agencies.”); Chicago Bar Foundation, “The Legal Aid Safety Net: A Report on the Legal Needs of Low-Income Illinoisans,” at 30 (Feb. 2005) (less than 25 percent of respondents indicated that they were aware of free legal services); *Id.* at 45 (“White households were 50 percent more likely to be aware of legal aid services than African-American households, and twice as likely as Latino households to be aware of free legal services in their area.”)
- ⁶² Poverty Research Institute of Legal Services of New Jersey, *supra* note 59, at 37 (aside from inability to pay, respondents did not seek legal help for perceived legal needs because of “the belief that the problem was not important enough to pursue, the fear of retaliation, and the belief that nothing could be done.”)
- ⁶³ National Center for Children in Poverty, “District of Columbia: Demographics of Low-Income Children” (2006), *available at* http://www.nccp.org/profiles/DC_profile_6.html and http://www.nccp.org/profiles/DC_profile_7.html.
- ⁶⁴ *Id.*
- ⁶⁵ U.S. Census Bureau, State and County QuickFacts, District of Columbia, *available at* <http://quickfacts.census.gov/qfd/states/11000.html>. The U.S. Census Bureau defines disability as a long-lasting sensory, physical, mental, or emotional condition or conditions that make it difficult for a person to do functional or participatory activities such as seeing, hearing, walking, climbing stairs, learning, remembering, concentrating, dressing, bathing, going outside the home or working at a job. American Community Survey, Puerto Rico Community Survey, 2006 Subject Definitions, *available at* <http://www.census.gov/acs/www/Downloads/2006>.
- ⁶⁶ U.S. Census Bureau, 2006 American Community Survey, S1801 Disability Characteristics, *available at* http://factfinder.census.gov/servlet/STTable?_bm=y&-context=st&-qr_name=ACS_2006_EST_G00_S1801&-ds_name=ACS_2006_EST_G00_&-CONTEXT=st&-tree_id=306&-redoLog=false&-caller=geoselect&-geo_id=04000US11&-format=&-lang=en.
- ⁶⁷ Ali-Sha Alleman, MSW, Founder/Executive Director, Ramona’s Way.
- ⁶⁸ California Commission on Access to Justice, “Language Barriers to Justice in California,” at 31 (Sept. 2005).
- ⁶⁹ Center for Survey Research & Analysis, University of Connecticut, *supra* note 52 at 5 (Apr. 2003).
- ⁷⁰ Lynn E. Cunningham, “Legal Needs for the Low-Income Population in Washington, DC,” 5 U. D.C. L. Rev. 21, 49-50 (2000).
- ⁷¹ Julie Reynolds, “Breaking Down Language Barriers to Legal Services,” Washington Lawyer (Jun. 2005), *available at* http://www.dcb.org/for_lawyers/resources/publications/washington_lawyer/june_2005/langua.cfm.
- ⁷² DC Courts, 2007 Annual Report, 2007 Statistical Summary, *available at* http://www.dccourts.gov/dccourts/about/annual_report.jsp.
- ⁷³ See, e.g., California Commission on Access to Justice, “Language Barriers to Justice in California” (Sept. 2005); Task Force on Limited English Proficiency, “A Report to the Justice Action Group on Access to Maine Courts for Individuals with Limited English Proficiency” (Jan. 2005).
- ⁷⁴ U.S. Census Bureau, 2006 Population Estimates, GCT-T4-R. Percent of the Total Population Who Are 65 Years and Over (geographies ranked by estimate), *available at* http://factfinder.census.gov/servlet/GCTTable?_bm=y&-geo_id=01000US&-box_head_nbr=GCT-T4-R&-ds_name=PEP_2006_EST&-format=US-9Sc. This is similar to the national figure of 12.4 percent of the population over the age of 65 and ranks the District as the 35th oldest population among the District and all of the states. *Id.*
- ⁷⁵ Ari Houser, et al, AARP Public Policy Institute, “Across The States Profiles of Long-Term Care and Independent Living: District Of Columbia” (Dec. 2006), *available at* http://assets.aarp.org/rgcenter/health/d18763_2006_ats_dc.pdf.
- ⁷⁶ AARP Foundation, et al, “District of Columbia GrandFacts: A State Fact Sheet for Grandparents and Other Relatives Raising Children” (Sept. 2007), *available at* <http://www.grandfactsheets.org/doc/DC%20English%2007.pdf>. While not all grandparents are elderly, this statistic indicates that at least some of the elderly population are taking on increased familial responsibilities.
- ⁷⁷ Over 15,000 District residents over the age of 65 have a disability that prevents them from leaving their home alone. DC Office on Aging, Customer Service and Community Affairs Unit, “A Snapshot of the Elderly Population in Washington, DC,” at 3 (Jul. 2007).
- ⁷⁸ State Education Agency, Adult Education & Family Literacy, “State of Adult Literacy Report, Investing in Human Capital,” at 3 (Mar. 2, 2007).
- ⁷⁹ *Id.* at 5.
- ⁸⁰ *Id.* at 6.
- ⁸¹ *Id.*
- ⁸² *Id.* at 9.
- ⁸³ Washington Lawyers’ Committee for Civil Rights and Urban Affairs (WLC), DC Prisoners’ Project, *available at* http://www.washlaw.org/projects/dcprisoners_rights/default.htm.
- ⁸⁴ *Id.*
- ⁸⁵ This limited access itself may be a legal issue as prison officials may violate prisoners’ constitutional rights by failing to provide inmates with adequate law libraries or legal assistance. See *Bounds v. Smith*, 430 U.S. 817 (1977). See also WLC, Access to the Courts, *available at* http://www.washlaw.org/projects/dcprisoners_rights/access_to_the_courts.htm.
- ⁸⁶ Fannie Mae Foundation & The Urban Institute, “Housing in the Nation’s Capital 2005,” *available at* <http://www.fanniemaefoundation.org/2005/hnc2005.html>.
- ⁸⁷ *Id.*
- ⁸⁸ *Id.* Leonard A. Sipes, Jr., “Treatment, Education and Job Related Services for Offenders on Community Supervision: A Guide to Resources Within the Court Services and Offender Supervision Agency (CSOSA) 2006,” *available at* http://www.csosa.gov/Olipa/pubs/CSOSA_Treatment_Services_2006.pdf.
- ⁸⁹ CSOSA, “Appropriation Summary Statement FY 2007,” *available at* http://www.csosa.gov/budget/fy2007_csosa_summary_statement.pdf.
- ⁹⁰ *Id.*
- ⁹¹ *Id.*
- ⁹² Caterina Gouvis Roman & Jeremy Travis, The Urban Institute, “Taking Stock: Housing, Homelessness, and Prisoner Reentry,” at 10 (Mar. 8, 2004), *available at* http://www.urban.org/UploadedPDF/411096_taking_stock.pdf.
- ⁹³ Legal Services for Prisoners with Children, “Overview,” *available at* <http://www.prisonerswithchildren.org/issues/pwcover.htm>.
- ⁹⁴ Nicole Summer, “Powerless in Prison: Sexual Abuse Against Incarcerated Women,” RH Reality Check (Dec. 11, 2007), *available at* <http://www.rhrealitycheck.org/blog/2007/12/11/powerless-in-prison-sexual-abuse-against-incarcerated-women>; WLC, “Women in Prison,” *available at* http://www.washlaw.org/projects/dcprisoners_rights/women_in_prison.htm.
- ⁹⁵ WLC, *supra* note 94.
- ⁹⁶ *Id.*
- ⁹⁷ *Id.*
- ⁹⁸ *Id.*
- ⁹⁹ Roman & Travis, *supra* note 92.
- ¹⁰⁰ DCPLSP is now a part of the WLC.

- ¹⁰¹ See DC Bar Foundation, *supra* note 21, at 7-8 (containing additional information about the history of legal services in the District).
- ¹⁰² See Greenberger, *et al.*, “Cold, Harsh, and Unending Resistance: The District of Columbia Government’s Hidden War Against Its Poor And Its Homeless” (Nov. 22, 1993), available at <http://www.legalclinic.org/pdf/Cold%20Harsh%20Unending.pdf>.
- ¹⁰³ The goal of such an office is to increase the efficiency of the intake and referral process, which has long been a goal of legal services providers. See Katherine S. Broderick, “Introduction,” 5 U. D.C. L. Rev. 1, 7 (Fall 2000) (“In the view of many DC legal services providers, coordinated intake is the next essential step needed in the District to radically improve legal services delivery.”) Creating a coordinated intake system presents significant logistical challenges, such as taking into account different programs’ intake criteria, maintaining confidentiality and ensuring that people seeking assistance do not fall through the cracks while programs are deciding whether to take a case. *Id.* In 2007, the DC Bar Foundation awarded a planning grant to three of the largest legal services providers to begin planning for such a system. *Id.*
- ¹⁰⁴ The role of pro bono attorneys and private practitioners in legal services delivery is discussed, *infra*, in Sections V.A.7 and V.B, respectively.
- ¹⁰⁵ This discussion focuses on the responses given by community-based organizations. Legal services lawyers expressed very similar sentiments during a listening session with line attorneys in 2006. See DC Bar Foundation, *supra* note 26.
- ¹⁰⁶ “Full representation” can encompass a range of matters, from relatively simple administrative hearings to complex class action cases. The figures do not include cases handled by pro bono counsel. However, one organization included its referrals to pro bono counsel because it does not do any cases in-house. The full representation figure does include the work of associates whom law firms “loan” to legal services providers for a specified period of time.
- ¹⁰⁷ A “referral” includes anything from giving a person a list of other legal services providers to spending hours trying to find an entity willing to take the person’s case. Self-help materials are often distributed at court-based resource centers, outreach events and in response to requests for specific information. It is possible that these figures overstate the number of people who were assisted. Although we asked legal services providers only to report the primary service that was provided to each resident, it is possible that a resident sought assistance from more than one provider. So, for instance, a person might have gotten a referral from organiza-
- tion A to organization B and then received limited advice from organization B. It is entirely possible that both organizations A and B would each count this as one person served. The figures also do not take into account that the same person may have sought assistance from an organization more than once during the year for different problems.
- ¹⁰⁸ The OAG represents hundreds of people seeking protection orders in domestic violence cases annually. The DC Superior Court’s Family Court Self-Help Center provided legal information to nearly 4,500 residents in 2005 and made 500 referrals.
- ¹⁰⁹ Mary Madden, Pew Internet and American Life Project, “Internet Penetration and Impact” (Apr. 2006), available at http://www.pewinternet.org/PPF/r/182/report_display.asp (showing that 53 percent of adults in households with less than \$30,000 in income go on-line, versus 80 percent of those with income between \$30,000—\$50,000).
- ¹¹⁰ Our survey did not seek to assess the courts’ accessibility to LEP litigants. Hallmarks of an accessible court system include prominently displayed signage in the primary foreign languages spoken in the jurisdiction, interpreters of sufficient quality, quantity and availability, and staff able to respond appropriately to LEP residents’ requests for information. Such an assessment should be the subject of a future study.
- ¹¹¹ The data listed below does not include information from government entities, such as the Family Court Self-Help Center and the OAG, Domestic Violence Unit.
- ¹¹² One organization reported data for all the LEP people it assisted, regardless of residency. The organization reported assisting 715 Spanish speakers, 600 French speakers, 116 Amharic speakers and 37 Arabic speakers.
- ¹¹³ Organizations reported a total of 67 staff members (or members of affiliated organizations) who spoke Spanish. Eight spoke French and six spoke Chinese. Other languages had only one bilingual staff member.
- ¹¹⁴ See, e.g., “Department of Justice Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons”, 67 Fed. Reg. 41455, 41461 (2002).
- ¹¹⁵ *Id.*
- ¹¹⁶ Giving USA Foundation, “Giving USA 2007” (2007).
- ¹¹⁷ IOLTA proceeds are very sensitive to interest rate fluctuations. The decline in interest rates in late 2007 and early 2008 will make it increasingly challenging to maintain IOLTA proceeds at high levels. The DC Bar Foundation has proposed changes to the IOLTA program designed to increase IOLTA revenue. These rule changes must be approved by the DC Bar and DC Court of Appeals.
- ¹¹⁸ DC Courts, “2005 Annual Report,” at 5, available at <http://www.dccourts.gov/dc-courts/docs/DCC2005AnnualReport.pdf>; DC Courts, “2006 Annual Report,” at 14, available at <http://www.dccourts.gov/dc-courts/docs/DCC2006AnnualReport.pdf>. The cited figures do not include the portion of the DC Courts’ budget that is used for capital expenditures.
- ¹¹⁹ These figures include the budget of the District’s Public Defender Service and the amount spent on private attorneys who are appointed by the Courts to represent indigent defendants. DC Courts, “2005 Annual Report,” *supra* note 118, at 22; DC Office of the Chief Financial Officer, “Fiscal Year 2005 Budget Request Act,” at 3 (2004) available at http://cfo.dc.gov/cfo/frames.asp?doc=/cfo/lib/cfo/budget/2005/pdf/executive_summary/es05_act.pdf&open=%7C33210%7C; DC Courts, “2006 Annual Report,” *supra* note 118, at 14; DC Office of the Chief Financial Officer, “Fiscal Year 2007 Budget Request Act,” at 3 (2006), available at http://cfo.dc.gov/cfo/frames.asp?doc=/cfo/lib/cfo/budget/2007/DC_Budget-Volume_1n.pdf&open=%7C33210%7C.
- ¹²⁰ DC Office of the Chief Financial Officer, “Fiscal Year 2006 Budget and Financial Plan,” at A-157, available at <http://cfo.dc.gov/cfo/cwp/view,a,1321,q,629443.asp>; DC Office of the Chief Financial Officer, “Fiscal Year 2008 Budget and Financial Plan,” at A-185, available at http://cfo.dc.gov/cfo/frames.asp?doc=/cfo/lib/cfo/budget/2008/volume_2a_web2.pdf. The figure for the OAG’s budget in fiscal year 2007 does not include the \$3.2 million for civil legal services that was added to the OAG’s budget by the Council but passed through to the DC Bar Foundation to administer.
- ¹²¹ See Chicago Bar Foundation & The Illinois Coalition for Equal Justice, *supra* note 28; John Tobin, “Urgent Memo to Ourselves: Legal Services Is Not the Peace Corps (Addressing the Salary Chasm Now),” Management and Information Exchange Journal 5 (Spring 2003).
- ¹²² Our survey asked for both the number of lawyers and the number of managers at each organization. Since almost all the managers are also lawyers, we included them in the FTE total for lawyers.
- ¹²³ These “right to counsel” cases are discussed in Section V.B., *infra*.
- ¹²⁴ These figures do not include (1) FTE time spent serving non-District residents for organizations that also provide legal services in Maryland and Virginia; and (2) FTE legal services attorneys working on cases where there is a right to counsel. The figures include the executive directors and other managers working for legal services organizations since almost all of them are attorneys.
- ¹²⁵ The total FTEs broken down by subject area does not add up to the total number of legal

services attorneys working for legal services providers because Chart No. 8 does not include time spent on functions other than legal services delivery, such as community outreach, management, administrative and fundraising matters.

¹²⁶ The Consortium is a coalition of 28 non-profit organizations dedicated to meeting the civil legal needs of the District's low-income and disadvantaged population. The Consortium's mission is to increase the quantity, improve the quality and coordinate the delivery of legal services and advocacy on behalf of low-income and disadvantaged individuals and organizations in the District.

¹²⁷ See DC Bar, "2006 DC Bar Pro Bono Initiative Report 2005 Reporting Year," available at http://www.dcbar.org/for_lawyers/pro_bono/resources/report.cfm. These figures were reported as part of a DC Bar initiative that began in 2001, which sought to get the 50 largest firms in the District to commit to at least 3 percent or 5 percent of their billable hours (or 60 or 100 hours per attorney respectively) to pro bono work. The Commission launched a joint project with the DC Bar in 2007 to expand the initiative to the 51st–100th largest law firms in the city.

¹²⁸ Our survey asked about the number of matters handled by pro bono attorneys and the number of pro bono hours provided to clients of legal services providers (excluding the number of hours spent by pro bono attorneys on matters handled entirely within their own firms or agencies). Survey respondents did not have this data with sufficient specificity to report on it.

¹²⁹ DC Rules of Professional Conduct 6.1, comment 2, available at http://www.dcbar.org/new_rules/rules.cfm.

¹³⁰ *Id.* at comment 5. The DC Circuit Judicial Conference Standing Committee on Pro Bono Legal Services has been tracking private law firms' and government agencies' implementation of this resolution. See United States District of Columbia Circuit Judicial Conference Standing Committee on Pro Bono Legal Services, "Report of the Standing Committee on Pro Bono Legal Services," at 3 (2006).

¹³¹ See Exec. Order 12988, 61 Fed. Reg. 4,727 (Feb. 7, 1996).

¹³² Among other things, the DC Bar Pro Bono Program runs a number of court-based resource centers (landlord tenant, probate, tax sales) operates a variety of legal clinics, has projects to encourage community and economic development, affordable housing and small businesses and mentors law firms and legal services providers to develop and enhance pro bono programs. See DC Bar Pro Bono Program, available at http://www.dcbar.org/for_lawyers/pro_bono/index.cfm.

¹³³ Some federal government agency pro bono policies do have provisions for administrative support.

¹³⁴ For instance, the DC Bar Pro Bono Program launched an initiative aimed at getting senior lawyers to do pro bono work. See DC Bar, Senior Lawyer Public Interest Project, available at http://www.dcbar.org/for_lawyers/pro_bono/senior_lawyer_public_interest_project/index.cfm. According to former ABA President Karen Mathis, 400,000 of the nation's 1.1 million lawyers are baby boomers. Many of those lawyers will retire in the next ten to 15 years, and could become a vast reservoir of talent to assist low-income people across the country. By providing administrative support, the legal services network should be able to tap into this potential pro bono pool to a greater degree.

¹³⁵ GALs appointed by the Family Court in child abuse and neglect cases come from CLC, a nonprofit legal services organization that has a contract with the Family Court to provide these services, and from private practitioners who are on a court-approved panel.

¹³⁶ See D.C. Code § 16-2304.

¹³⁷ See D.C. Code § 21-501, *et seq.*

¹³⁸ *Id.* at § 21-541(a).

¹³⁹ See D.C. Code § 7-1304.02.

¹⁴⁰ With one exception, the discussion of these areas is arranged in alphabetical order. The exception is public benefits, which precedes the health/disability section due to the close relationship between these two subject areas.

¹⁴¹ U.S. Census Bureau, *supra* note 30.

¹⁴² *Id.*

¹⁴³ The top four zip codes are 20002, 20011, 20019 and 20020.

¹⁴⁴ The data collection results may be affected by the fact that two of the participating court resource centers provide only brief advice/*pro se* assistance and are not permitted to provide full representation. In addition, some providers may not make decisions regarding full representation during the intake process, which was when the data collection forms were completed. The results on the number of clients provided full representation would not account for those situations where it was later determined that the client should receive full representation. Some providers also identified more than one result/outcome on their data collection forms.

¹⁴⁵ DC Agenda, "2004 Issue Scan Full Report," at 54 (Jan. 2004).

¹⁴⁶ *Id.*

¹⁴⁷ Payday Loan Consumer Protection Amendment Act of 2007 (codified at D.C. Code § 26-301, *et seq.*).

¹⁴⁸ Nikita Stewart, "Bill to Cap Payday Loan Interest Rate Passes," The Washington Post, at B04 (Sept. 19, 2007).

¹⁴⁹ OAG, *supra* note 57, at 8.

¹⁵⁰ DC Agenda, *supra* note 145 at 55; see also Kenneth Temkin & Noah Sawyer, The Urban Institute & Communities Policy Center, "Analysis of Alternative Financial Service Providers," at 11 (Feb. 2004).

¹⁵¹ DC Agenda, *supra* note 145, at 55.

¹⁵² Temkin & Sawyer, *supra* note 150, at 11-13.

¹⁵³ DC Department of Insurance, Securities and Banking Press Release, "Find Out About Home Lending and Foreclosure Rescue Scams" (Aug. 10, 2007), available at <http://newsroom.dc.gov/show.aspx/agency/dist/section/2/release/11640>.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Federal Trade Commission (FTC), "Consumer Fraud and Identity Theft Complaint Data, January—December 2005," at 16 (2006), available at <http://www.consumer.gov/sentinel/pubs/Top10Fraud2005.pdf>.

¹⁵⁷ *Id.* at 28.

¹⁵⁸ *Id.*

¹⁵⁹ Cunningham, *supra* note 70, at 50.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ U.S. Courts, Bankruptcy Statistics, available at <http://www.uscourts.gov/bnkrpctstats/statistics.htm#calendar>.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ DC Bar, Bankruptcy Clinic (discussing 2002 figures), available at http://www.dcbar.org/for_lawyers/pro_bono/about_the_program/erving_the_community/bankruptcy.cfm.

¹⁶⁷ DC Circuit Judicial Conference Standing Committee on Pro Bono Legal Services, *supra* note 130 at 18 (Jun. 2006).

¹⁶⁸ Jay Fleischman, "Consumer Groups: Fix Bankruptcy Laws So Hundreds of Thousands of Americans Can Avoid Home Foreclosures In Subprime Mortgage Crisis," U.S. Newswire (Apr. 12, 2007).

¹⁶⁹ Testimony of Peter A. Tatian, The Urban Institute, before DC Department of Insurance Committee on Consumer and Regulatory Affairs Budget Hearing for the Department of Insurance, Securities and Banking, at 1 (Apr. 11, 2006).

¹⁷⁰ OAG, *supra* note 57, at 15.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.* at 17.

¹⁷⁴ Statement of Peter A. Tatian, The Urban Institute, before the Council's Committee on Public Services and Consumer Affairs, "Hearing on Home Equity Protection Act Subprime Mortgage Lending in Washing-

- ton, DC,” at 1 (Mar. 14, 2007) (citing Eric Stein, The Center for Responsible Lending, “Quantifying the Economic Cost of Predatory Lending” (2001)).
- ¹⁷⁵ Ellen Schloemer, *et al.*, Center for Responsible Lending, “Losing Ground: Foreclosures in the Subprime Market and their Cost to Homeowners,” at 20 (Dec. 2006).
- ¹⁷⁶ Testimony of Peter A. Tatian, *supra* note 169, at 2.
- ¹⁷⁷ *Id.*
- ¹⁷⁸ *Id.*
- ¹⁷⁹ FTC, *supra* note 156, at 17.
- ¹⁸⁰ Prepared Statement of the FTC on Identity Theft Before the Committee on the Judiciary Council of the District Of Columbia, Washington, DC, at 11 (Apr. 3, 2003).
- ¹⁸¹ The Prepared Statement noted that the high per capita ranking of the District reflects several anomalies: (1) frequent local media coverage in the District has resulted in an unusually high rate of knowledge among District residents of the FTC’s complaint handling program; and (2), the District, which is wholly urban, is treated as a state for statistical purposes, resulting in a higher concentration of identity theft cases. *Id.*
- ¹⁸² Although consumer issues have not received as much attention as family law or housing in the District, this subject area has long been identified as an area of substantial need. In the September 2003 DC Bar Foundation report, consumer issues were listed as the fourth largest area of need, behind only housing, family and probate. In the interim report issued by the DC Bar Subcommittee on Legal Needs in 1998, consumer issues, along with employment and immigration, were identified by the largest number of providers as an area of unmet need.
- ¹⁸³ OAG Press Release, “DC Attorney General Targets High Cost of Being Poor” (Apr. 26, 2007), *available at* http://occ.dc.gov/occl/frames.asp?doc=/occl/lib/occl/news/04-26-07_high_cost_press_packet.pdf.
- ¹⁸⁴ U.S. Department of Education, National Center for Education Statistics, Common Core Data, “Numbers and Types of Public Elementary and Secondary Schools From the Common Core of Data: School Year 2005-06,” at 6 (Jul. 2007).
- ¹⁸⁵ *Id.* Charter school enrollment has risen an average of 13 percent annually since 2001. V. Dion Haynes & Theola Labbé, “A Boom for DC Charter Schools,” *The Washington Post*, at A01 (Apr. 25, 2007).
- ¹⁸⁶ Alliance for Excellent Education, “The High Cost of High School Dropouts” (Oct. 2007), *available at* <http://www.all4ed.org/files/HighCost.pdf>.
- ¹⁸⁷ *Id.*
- ¹⁸⁸ Alliance for Excellent Education, “Potential Economic Impacts of Improved Education on Washington, DC” (Oct. 2007), *available at* http://www.all4ed.org/files/DC_econ.pdf.
- ¹⁸⁹ *Id.*
- ¹⁹⁰ American Youth Policy Forum, “Every Nine Seconds in America a Student Becomes a Dropout,” at 2 (Mar. 2006).
- ¹⁹¹ Charter schools have also experienced their share of problems. See Bill Myers, “DC Charter School May Go Bust,” *The Examiner* (Oct. 27, 2007) (discussing the Public Charter School Board’s review of a District charter school whose leader faced prosecution for theft of federal and city funds), *available at* http://www.examiner.com/printa-1013292-D.C._charter_school_may_go_bust.html; PBS NewsHour, “DC Weighs Record of Charter Schools” (Jun. 11, 2007) (discussing the mixed record of student performance among the District’s charter schools), *available at* http://www.pbs.org/newshour/bb/education/jan-june07/charter_06-11.html.
- ¹⁹² Dan Keating & V. Dion Haynes, “Can DC Schools Be Fixed?” *The Washington Post*, at A01 (Jun. 10, 2007).
- ¹⁹³ Government of the District of Columbia, OIG, “Audit of the District of Columbia Public Schools’ Incident Reporting,” at 1 (2004).
- ¹⁹⁴ Parents United for DC Public Schools, Civic Leader Advisory Committee Report, “Separate and Unequal: The State of the District of Columbia Public Schools Fifty Years After *Brown and Bolling*,” at 13 (Mar. 2005).
- ¹⁹⁵ DC Appleaseed & Piper Rudnick LLP, “A Time for Action: The Need to Repair the System for Resolving Special Education Disputes in the District of Columbia,” at 16 (2005), *available at* www.dcappleaseed.org/projects/publications/Special_Ed_Rprt.pdf.
- ¹⁹⁶ Parents United for DC Public Schools, *supra* note 194, at 26.
- ¹⁹⁷ Bill Myers, “Judge sets Deadline for Special Ed Plan,” *The Examiner* (Nov. 1, 2007).
- ¹⁹⁸ DC Appleaseed & Piper Rudnick LLP, *supra* note 195, at 57.
- ¹⁹⁹ Pam Stenhjem, “Youth with Disabilities in the Juvenile Justice System: Prevention and Intervention Strategies” (Feb. 2005), *available at* <http://ncset.org/publications/viewdesc.asp?id=1929>; Joseph Tulman, “Disability and Delinquency: How Failures to Identify, Accommodate and Serve Youth with Education-Related Disabilities Leads to Their Disproportionate Representation in the Delinquency System,” 3 *Whittier J. Child & Fam. Advoc.* 3, 4 (2003).
- ²⁰⁰ Tulman, *supra* note 199, at 30.
- ²⁰¹ Parents United for DC Public Schools, *supra* note 194, at 12 (figures are for the 2004-2005 school year).
- ²⁰² Council of the Great City Schools, “Beating the Odds VII—City by City Profiles” (Apr. 2007), *available at* http://www.cgcs.org/BTO7/District_of_Columbia.pdf.
- ²⁰³ *Id.*
- ²⁰⁴ Fannie Mae Foundation & The Urban Institute, “Housing in the Nation’s Capital,” at 46 (2006), *available at* <http://www.fanniemae.org/publications/reports/hnc/2006/hnc2006.html>.
- ²⁰⁵ *Id.*
- ²⁰⁶ Cunningham, *supra* note 70, at 44. Many of the initiatives that have been undertaken are due to work of the WLC. It relies heavily on pro bono attorneys to carry out its work.
- ²⁰⁷ DC Mayor’s Office News Release, “Mayor Adrian M. Fenty Announces Education Initiative” (Jan. 4, 2007).
- ²⁰⁸ See, e.g., Theola Labbé, “Fenty, Rhee May Close 24 Schools, Reduce Staff,” *The Washington Post*, at A1 (Nov. 28, 2007); Theola Labbé, “DC Schools Chief Wants Power to Fire Ineffective Teachers,” *The Washington Post*, at A1 (Oct. 13, 2007).
- ²⁰⁹ See Fiscal Year 2008 Budget Request Act, A17-0051 (2007) (capping fees at \$4,000 per case).
- ²¹⁰ DC Bar Public Service Activities Corporation Interim Report, “Survey of Unmet Civil Legal Needs in the District of Columbia,” at 6 (Aug. 1998).
- ²¹¹ DOES Press Release, “The District’s Unemployment Rate Drops Slightly to 6.0 Percent” (Jan. 25, 2006), *available at* <http://newsroom.dc.gov/show.aspx/agency/does/section/2/release/8840/year/2006/month/1>. The District’s seasonally adjusted January 2007 unemployment rate was 6.1 percent. DOES Press Release, “District of Columbia’s Unemployment Rate falls to 6.1 Percent in January 2007” (Mar. 9, 2007), *available at* <http://newsroom.dc.gov/show.aspx/agency/does/section/2/release/10734>. The seasonally adjusted national unemployment rate in January 2007 was 4.6 percent. *Id.*
- ²¹² See DC Agenda, *supra* note 145, at 50.
- ²¹³ Ed Lazere, DC Fiscal Policy Institute, “DC’s Two Economies: Many Residents Are Falling Behind Despite the City’s Revitalization,” at 7 (Oct. 24, 2007), *available at* <http://dcfpi.org/?p=120>. African Americans’ residents’ rate of unemployment is 10.1 percent compared to 2.0 percent for whites. *Id.*
- ²¹⁴ *Id.*
- ²¹⁵ *Id.*
- ²¹⁶ DOL, Bureau of Labor Statistics, “How the Government Measures Unemployment” (2001), *available at* http://www.bls.gov/cps/cps_hgtm.htm. “Marginally attached” persons are those who indicate that they currently want a job, have looked for work in the last 12 months (or since they last worked if they worked within the last 12 months), and are available for work. *Id.* “Discouraged workers,” a subset of the marginally

- attached, indicate that they are not currently looking for work for at least one of four reasons: (1) they believe no job is available to them in their line of work or area; (2) they had previously been unable to find work; (3) they lack the necessary schooling, training, skills or experience; or (4) employers think they are too young or too old, or they face some other type of discrimination. *Id.*
- ²¹⁷ The DOL publishes the “U-6” unemployment rate for the nation on a monthly basis. DOL, Bureau of Labor Statistics, “Table A-12. Alternative Measures of Labor Underutilization,” *available at* <http://www.bls.gov/news.release/empsit.t12.htm>. The U-6 rate includes the “[t]otal unemployed, plus all marginally attached workers, plus total employed part-time for economic reasons, as a percent of the civilian labor force plus all marginally attached workers.” *Id.* The November 2007 U-6 unemployment rate was 8.4 percent, compared to the official unemployment rate, or U-3 measure, of 4.7 percent. *Id.*; *see also* John Schmitt, Center for Economic and Policy Research, “Is the Unemployment Rate in Sweden Really 17 Percent?” (Jun. 2007), *available at* http://www.cepr.net/documents/publications/sweden_unemployment_2007_06.pdf. In the District, according to 2000 Census data, there were 154,450 individuals classified as “not in the labor force” out of a total household population aged 16 and over of 434,060. U.S. Census Bureau, “PHC-T-28 Employment Status of the Population in Households for the United States, States, Counties, Places, and for Puerto Rico: 2000” (Census 2000), *available at* <http://www.census.gov/population/cen2000/phc-t28/tab01.xls>.
- ²¹⁸ DC Agenda, *supra* note 145.
- ²¹⁹ *Id.*
- ²²⁰ *Id.*; The Urban Institute, Full Transcript of Session: “Welfare and the Working Poor in a Battered Economy” (Oct. 2, 2001), *available at* <http://www.urban.org/publications/900391.html>.
- ²²¹ Ed Lazere, *supra* note 213, at 9.
- ²²² *Id.* at 14.
- ²²³ “Real earnings” are earnings that have been adjusted for inflation. “Low-wage” workers are defined as the 20th percentile wage among working District residents. “High-wage” workers are defined here as those with earnings at the 80th percentile, or higher than 80 percent of working DC residents. *Id.* at 11.
- ²²⁴ *Id.* at 13.
- ²²⁵ *Id.*
- ²²⁶ *See*, D.C. Code § 32-1003 (2007). Employers must also pay their employees at least twice monthly on designated paydays, pay all earned and promised wages and pay wages timely upon termination of employment. *Id.* at §§ 32-1301 to 32-1310. In addition, District law establishes reasonable allowance levels for work-related situations or special conditions associated with employment relationships, such as travel allowances, meal and uniform allowances. *Id.* at § 32-1006.
- ²²⁷ National Employment Law Project Immigrant & Nonstandard Worker Project Policy Update, “Holding the Wage Floor: Enforcement of Wage and Hour Standards for Low-Wage Workers in an Era of Government Inaction and Employer Unaccountability,” at 2 (Oct. 2006) (citing DOL, Bureau of Labor Statistics, “A Profile of the Working Poor, 2004,” (May 2006); David Weil, “Compliance with the Minimum Wage: Can Government Make a Difference?” at 10-11, 30 (May 2004)).
- ²²⁸ *Id.* at 3 (citing Andrew Dunn, “Contract Workers at Wal-Mart Gain in Overtime Case,” *Bloomberg News*, (Dec. 30, 2004); National Employment Law Project, “Subcontracted Workers: The Outsourcing of Rights and Responsibilities” (Mar. 2004)).
- ²²⁹ *Id.*
- ²³⁰ 42 U.S.C.A. §§ 2000e to 2000e-17 (2007); D.C. Code §§ 2-1402.01, 2-1402.11 to 2-1402.13 (2007).
- ²³¹ D.C. Code § 2-1402.11 (2007).
- ²³² 42 U.S.C.A. §§ 2000e-2 (2007); D.C. Code § 2-1402.11 (2007).
- ²³³ Philip L. Bartlett II, “Disparate Treatment: How Income Can Affect The Level Of Employer Compliance With Employment Statutes,” 5 N.Y.U.J. Legis. & Pub. Pol’y 419, 445-450 (2001-2002).
- ²³⁴ *Id.* at 445-46.
- ²³⁵ *Id.* at 446.
- ²³⁶ *Id.* at 448.
- ²³⁷ All laws enforced by the EEOC, except the Equal Pay Act, require filing a charge with the EEOC before a private lawsuit may be filed in court; a charge must be filed with EEOC within 180 days from the date of the alleged violation. *See* U.S. EEOC, *available at* <http://www.eeoc.gov/>. This deadline is extended to 300 days if the charge also is covered by a state or local anti-discrimination law, except for charges under the Age Discrimination in Employment Act of 1967, where only state laws extend the filing limit to 300 days. *Id.* 29 U.S.C. §§ 621 to 634 (2007).
- ²³⁸ Bartlett, *supra* note 233, at 448.
- ²³⁹ *Id.*
- ²⁴⁰ *Id.* at 450.
- ²⁴¹ *Id.* at 451.
- ²⁴² ORM provides risk identification, analyses, control and financing direction, guidance and support to District agencies so that they can minimize the total cost of risk. DC Office of Risk Management, *available at* <http://dc.gov/agencies/detail.asp?id=1628>.
- ²⁴³ EJC, “2005 Annual Report” (Mar. 24, 2006), *available at* http://www.dcejc.org/legal_ejc_app/docs/2005AnnualReport-Final.pdf.
- ²⁴⁴ G. Charles C. Maddox, Esq., DC Inspector General, “Agency-Wide Review of Selected Functions Within the Department of Employment Services,” OIG No. 01-1-27CF (Apr. 11, 2002), *available at* http://oig.dc.gov/news/PDF/2002_April_11/DOESReport.pdf. Among the deficiencies identified in the review were a lack of policies and procedures on program activities and functions, inadequately trained agency personnel and a high turnover within senior-level management, inadequate oversight and monitoring of duties performed by outside contractors (resulting in ineffective case management and increased overall program cost), lack of an integrated information management system to provide information on case management and financial activities of the programs; and the absence of a clear line of authority and coordination related to decision making on program administration between DOES and other District offices and contractors. *Id.* at 1-2.
- ²⁴⁵ D.C. Code §§ 1-623.01 to 1-623.47 (2007).
- ²⁴⁶ *Id.*
- ²⁴⁷ Testimony of Charles J. Willoughby, Inspector General, Before the Council’s Committee on Work Force Development and Government Operations, “Audits of The District of Columbia Employee Disability Compensation Program” (Jun. 11, 2007), *available at* <http://oig.dc.gov/news/PDF/release07/Testimony ORM June 11 2007 Committee version-FINAL.pdf>.
- ²⁴⁸ DOES: Workers’ Compensation, *available at* <http://www.does.dc.gov/does/cwp/view,a,1232,q,537428.asp>.
- ²⁴⁹ *Id.*
- ²⁵⁰ OIG, “Department of Employment Services Workers’ Compensation Processes—Resolution of Disputed Claims” (Jul. 2007), *available at* http://oig.dc.gov/news/PDF/release07/DOES_Final_ROI_WEB_POSTING_complete.pdf.
- ²⁵¹ *Id.* at 3.
- ²⁵² *Id.*
- ²⁵³ Testimony of Karen M. Minatelli, Coordinator, Program on Women’s Employment Rights, EJC, “Testimony for Hearing on DVUI Bill” (Nov. 10, 2003), *available at* <http://www.dcejc.org/app/docs/DCE-JCTESTIMONYFORHEARINGONDVUIBILL.pdf>.
- ²⁵⁴ *Id.*
- ²⁵⁵ *Id.*; Testimony of Vicky Lovell, Ph.D., Institute for Women’s Policy Research, “Appendix A to Testimony on the Paid Sick and Safe Days Act of 2007, Bill 17-197,” at 7 (Jul. 9, 2007), *available at* <http://www.iwpr.org/pdf/LovellPSSDAtestimony.pdf>.

- ²⁵⁶ Minatelli, *supra* note 253; Ellen Ridley, *et al.*, Maine Department of Labor & Family Crisis Services, “Domestic Violence Survivors at Work: How Perpetrators Impact Employment,” at 17 (Oct. 2005).
- ²⁵⁷ Minatelli, *supra* note 253; Ridley, *supra* note 256.
- ²⁵⁸ Jerrilyn T. Malana, “Domestic Violence in the Workplace: A Primer for Employers,” San Diego Daily Transcript, (Nov. 30, 2006).
- ²⁵⁹ 29 U.S.C.A. §§ 2601 to 2654 (2007); D.C. Code §§ 32-509 to 31-517 (2007).
- ²⁶⁰ D.C. Code §§ 2-1401.01 to 2-1404.01 (2007).
- ²⁶¹ Minatelli, *supra* note 253.
- ²⁶² Malana, *supra* note 258.
- ²⁶³ *Id.*; Ridley, *supra* note 256, at 18, 28; Victoria A. Lipnic & Paul DeCamp, “Family and Medical Leave Act Regulations: A Report on the Department of Labor’s Request for Information” (2007); Proposed Rule, 29 C.F.R. § 825, at 35582 (Jun. 28, 2007); David Cantor, *et al.*, “Balancing the Needs of Families and Employers: Family and Medical Leave Surveys,” at 3,8,10 (2000 Update).
- ²⁶⁴ Minatelli, *supra* note 253.
- ²⁶⁵ Under the Accrued Sick and Safe Leave Act, discussed later in this Section, domestic violence victims may use sick days provided pursuant to the Act for health and safety reasons. Accrued Sick and Safe Leave Act of 2007, A17-0324 (2008) (to be codified in D.C. Code Summer Supp. 2008).
- ²⁶⁶ Malana, *supra* note 258.
- ²⁶⁷ Ridley, *supra* note 256, at 28; Lipnic, *supra* note 263.
- ²⁶⁸ Lori G. Kletzer & Howard F. Rosen, The Brookings Institution, “Reforming Unemployment Insurance for the Twenty-First Century Workforce,” at 5 (Jan. 2006).
- ²⁶⁹ D.C. Code §§ 51-101 to 51-126 (2007).
- ²⁷⁰ Kletzer, *supra* note 268.
- ²⁷¹ The replacement rate is defined as average weekly benefits as a percentage of average weekly earnings. *Id.*
- ²⁷² D.C. Code §§ 2-1831.01 to 2-1831.19 (2007).
- ²⁷³ *Coto v. Citibank FSB*, No. 05-AA-629 (D.C. Dec. 14, 2006) (reversing OAH’s decision dismissing appeal for failure to file a hard copy document as opposed to a facsimile document, despite ambiguous advice received from OAH); *Calhoun v. Wackenhut Servs.*, 904 A.2d 343 (D.C. 2006) (same); *McDowell v. Southwest Distrib.*, 899 A.2d 767 (D.C. 2006) (remanding a case that OAH had dismissed as untimely filed where, although the claimant did not file his administrative appeal within the requisite ten days after its issuance, his failure to do so could be excused if he received ambiguous advice from DOES).
- ²⁷⁴ Prior legal needs studies in the District have also highlighted the extent of need in the employment area. In the DC Bar Foundation’s 2003 Report, workers’ rights were identified as an area in which there was a substantial gap in client service. In the 1998 interim report issued by the DC Bar Subcommittee on Legal Needs Assessment, employment legal needs, along with consumer and immigration, were identified by the largest number of providers as an area of unmet need. Employer abuses of undocumented workers, including violations of minimum wage and overtime and paycheck deductions, were reported by the study’s respondents. Following the 1998 report, the EJC was formed to vindicate the rights of unprotected and vulnerable populations (specifically minority workers, domestic violence victims and immigrant workers, among others) through legal services, advocacy and education work. See EJC, *available at* <http://www.dcejc.org/?template=about.html>.
- ²⁷⁵ Several large employers are represented by non-lawyers from private companies in their unemployment matters, particularly when the employer is the appellant. Tyrone F. Butler, Chief Administrative Law Judge, “Government of the District of Columbia Office of Administrative Hearings Presentation to the District of Columbia Access to Justice Commission,” at 5 (Apr. 17, 2007). If these appearances are included in the *pro se* data, 16-24 percent of appellants and 12-15 percent of appellees are represented in the appeals. *Id.*
- ²⁷⁶ *Id.* at 5. In the interim, OAH is developing a handout that will be provided to litigants when they file an appeal or appear for a hearing. OAH has also attempted to simplify its forms based on consultation with stakeholder representatives. *Id.*
- ²⁷⁷ D.C. Code § 51-111(h) (2007).
- ²⁷⁸ Butler, *supra* note 275.
- ²⁷⁹ Although workers’ compensation issues were not identified as a prevalent case type in the survey, they were cited as one out of five areas where there is a gap in legal services by legal services line attorneys during the 2006 listening sessions. DC Bar Foundation, *supra* note 26, at 4.
- ²⁸⁰ The Metropolitan Washington Council AFL-CIO and DC Chamber of Commerce programs did not receive the surveys underlying this report and, therefore, the staffing and case figures cited in this report do not reflect data related to these programs.
- ²⁸¹ EJC Press Release, “New Paid Sick and Safe Days Law Will Benefit all DC Workers, Families” (May 1, 2007), *available at* http://www.dcejc.org/legal_ejc_app/docs/PaidSickandSafedays5107.pdf; Accrued Sick and Safe Leave Act of 2007, *supra* note 265.
- ²⁸² Nearly half of all private sector employees in the U.S. have no paid sick days. DC Fiscal Policy Institute, “Meeting DC’s Challenges, Maintaining Fiscal Discipline: Strengthening Families and Neighborhoods by Increasing Incomes and Reducing Poverty” (Feb. 1, 2007), *available at* <http://dcfpi.org/?p=70>. This national data suggests that prior to the Accrued Sick and Safe Leave Act as many as 209,000 workers in DC did not get paid sick days. *Id.*
- ²⁸³ See *supra* notes 265 and 281.
- ²⁸⁴ See Dale Russakoff, “Get It All on Paper: Without Vital Documents, Aging and Incapacity Put Families in a Terrible Bind,” The Washington Post, at F4 (Mar. 25, 2007); (“American Association of Retired Persons (AARP) and the ABA are urging Americans not to wait until they are old to prepare wills and other planning documents.”). See also Helen W. Gunnarsson, “Estate Planning for the Rest of Us,” 95 Est. Plan. Ill. B.J. 510 (Oct. 2007) (“Pretty much everyone, whatever their level of prosperity” has estate planning needs).
- ²⁸⁵ Russakoff, *supra* note 284, at F1.
- ²⁸⁶ AARP Research Group, “Where There Is a Will . . . , Legal Documents Among the 50+ Population: Findings from an AARP Survey,” at 1, 7 (Apr. 2000).
- ²⁸⁷ According to a recent survey of adults aged 18 and over, 55 percent do not have a will and only 41 percent have a living will. Lawyers.com Press Release, “Majority of American Adults Remain Without Wills, New Lawyers.com Survey Finds” (Apr. 3, 2007) (Harris Interactive telephone poll in the United States on behalf of Lawyers.com from March 1-4, 2007 among 1,018 adults aged 18 and over), *available at* <http://law.lexisnexis.com/lmc/04-03-2007.asp>.
- ²⁸⁸ Russakoff, *supra* note 284, at F1; Pew Research Center for The People & The Press, “More Americans Discussing—and Planning—End-of-Life Treatment,” at 1 (Jan. 5, 2006) (noting their survey results indicate 29 percent of people have a living will).
- ²⁸⁹ Pew Research Center for The People & The Press, *supra* note 288, at 26. See also Ronald J. Scalise, Jr., “Honor Thy Father and Mother?: How Intestacy Law Goes Too Far in Protecting Parents,” 37 Seton Hall L. Rev. 171, 202 (2006) (“Among the factors contributing positively to the likelihood of intestacy are low income, low occupational status, and low educational level.”) (citing Alice S. Rossi & Peter H. Rossi, “Of Human Bonding: Parent-Child Relations Across the Life Course 473” (1990) (“[P]redictions concerning income and education are also confirmed, with written wills more prevalent among those with higher educational attainment and higher income . . .”).
- ²⁹⁰ See D.C. Code §§ 19-301 to 19-322 (2007).
- ²⁹¹ AARP Foundation, *et al.*, “District of Co-

- lumbia GrandFacts: A State Fact Sheet for Grandparents and Other Relatives Raising Children” (Sept. 2007), *available at* <http://www.giclocalsupport.org/grandfactsheet/doc/DC%20English%2007.pdf>.
- ²⁹² DC Superior Court, “Guardianships and Conservatorships for Adults in the District of Columbia,” *available at* <http://www.dccourts.gov/dccourts/superior/probate/brochure3.jsp>.
- ²⁹³ *Id.*
- ²⁹⁴ *Id.*
- ²⁹⁵ *Id.*
- ²⁹⁶ Mary Beth Beattie, “Top 10 Myths and Misconceptions in Estate Planning,” *The Maryland Bar Journal* (Mar./Apr. 2003); Lawyers.com Press Release, *supra* note 287; Gerry W. Beyer, “Statutory Fill-in Will Forms—The First Decade: Theoretical Constructs and Empirical Findings,” 72 *Or. L. Rev.* 769 (1993).
- ²⁹⁷ Kathy M. Kristof, “Estate Planning Can Help You Rest Easier,” *Los Angeles Times* (Oct. 28, 2007).
- ²⁹⁸ The DC Bar Foundation Report placed estate planning needs third, behind housing and family, on the list of subject areas with the most severe legal need. DC Bar Foundation, *supra* note 21, at 14.
- ²⁹⁹ Uniform Probate Code § 1-201-17 (“[F]ormal proceedings” are those proceedings conducted before a judge with notice to interested persons).
- ³⁰⁰ *See* Appendix H (detailing *Pro Se Statistics*).
- ³⁰¹ *Id.*
- ³⁰² WWLC, “Legal Services Fact Sheet” (Feb. 2007).
- ³⁰³ In addition, some have questioned whether a low-income resident who may be in a position to inherit valuable real property would be more appropriately served by a private attorney for a fee.
- ³⁰⁴ Between 2005 and 2020, the population over the age of 65 in the District is expected to increase by 48 percent. Ari Houser, *et al.*, AARP, “Across The States Profiles of Long-Term Care and Independent Living” (2006), *available at* http://www.aarp.org/research/longtermcare/trends/d18763_2006_at.html.
- ³⁰⁵ Each of these items is discussed below except for health care. It is discussed in Section VI.G.1.a.
- ³⁰⁶ DC Kids Count Collaborative, “Every Kid Counts in the District of Columbia: 14th Annual Fact Book,” at 16 (2007).
- ³⁰⁷ National Center for Children in Poverty, *supra* note 63.
- ³⁰⁸ *Id.*
- ³⁰⁹ *Id.*
- ³¹⁰ U.S. Department of Health and Human Services, Office of Child Support Enforcement, “State Boxscores for FY 2006 (PRELIMINARY),” *available at* http://www.acf.hhs.gov/programs/cse/pubs/2007/preliminary_report/state.html.
- ³¹¹ DC Applesseed, *et al.*, “Taking Care of the District’s Children: The Need to Reform DC’s Child Support System,” at 48 (Aug. 2007), *available at* <http://www.dcappleseed.org/resources/dcareport.pdf>.
- ³¹² *Id.*
- ³¹³ DC Courts Press Advisory, “Family Court and DC Attorney General’s Office Announce Launch of New Fathering Court” (Oct. 30, 2007), *available at* www.dccourts.gov/dccourts/docs/press/2007-10-29_FatheringCourtPilotLaunchAdvisory.pdf. In an effort to address this problem, the Fathering Court will focus on those who have been recently incarcerated. The Fathering Court will combine needs assessment, case management and other community resources to support parents so that they can meet their children’s needs. *Id.*
- ³¹⁴ Nationally, child support reduces child poverty by 5 percent by lifting 500,000 children out of poverty each year. Elaine Sorenson & Chava Zibman, The Urban Institute, “Child Support Offers Some Protection Against Poverty,” at Figure 1 (Mar. 2000).
- ³¹⁵ To date, the District has used local money to continue families on Temporary Assistance to Needy Families (TANF) after the expiration of the lifetime limit. While this mitigates the short-term crisis for families, the long-term issue remains. As discussed in Section VI.F.1, TANF is a federal block-grant program which is designed to provide cash assistance to very low-income families with children.
- ³¹⁶ WEAVE, “Domestic Violence Facts and Information,” *available at* <http://www.weaveincorp.org/information/index.cfm?fuseaction=moreFacts> (citing a DOJ report).
- ³¹⁷ Amy Farmer & Jill Tiefertal, “Explaining the Recent Decline in Domestic Violence,” at 4 (Dec. 2002), *available at* www.lanwt.org/pdfs/exdo.pdf.
- ³¹⁸ District of Columbia Coalition Against Domestic Violence, “Domestic Violence Statistics,” *available at* <http://www.dccadv.org/statistics.html>.
- ³¹⁹ District of Columbia, Metropolitan Police Department, “Domestic Violence and HIV,” *available at* http://mpdc.dc.gov/mpdc/frames.asp?doc=/mpdc/lib/mpdc/info/safety_pdf/DV_HIV.pdf.
- ³²⁰ *Id.*
- ³²¹ Martha Matthews, “Addressing the Effects of Domestic Violence on Children,” at 1 (1999), *available at* <http://www.casenet.org/library/domestic-abuse/effects.htm>.
- ³²² *Id.*
- ³²³ *Id.*
- ³²⁴ *Id.*
- ³²⁵ *Id.*
- ³²⁶ DC Courts, *supra* note 118, at 30.
- ³²⁷ District of Columbia Coalition Against Domestic Violence, *supra* note 318.
- ³²⁸ *Id.*
- ³²⁹ *Id.*
- ³³⁰ *See, e.g., LaShawn A. v. Fenty*, C.A. No. 89-1754 (D.D.C. filed Jun. 20, 1989).
- ³³¹ *See* Council for Court Excellence, “District of Columbia Child Welfare System, A Third Progress Report,” at 3 (Dec. 2006), *available at* <http://www.courtexcellence.org/publications/Reports/2006%20DC%20Child%20Welfare%20Third%20Progress%20Report.Final.pdf>.
- ³³² *Id.* at 10. Cases of child neglect and abuse being investigated by CFSA more than doubled, when four children were found dead in their District home in January 2008 and their mother was charged with their deaths. Petula Dvorak, “New Cases Strain Child Welfare Agency After Deaths of Four DC Girls, Firings,” *The Washington Post*, at B1 (Feb. 2, 2008).
- ³³³ Council for Court Excellence, *supra* note 331, at 8, 10.
- ³³⁴ *Id.*
- ³³⁵ *Id.* at 10.
- ³³⁶ Petula Dvorak, “Jack’s Case, Rise in Reports Might Chip Away at Strides,” *The Washington Post*, at C05 (Feb. 17, 2008).
- ³³⁷ *Id.*
- ³³⁸ *Id.*
- ³³⁹ *Id.*
- ³⁴⁰ Council for Court Excellence, *supra* note 331, at 12.
- ³⁴¹ Kathleen A. Bailie, Note, “The Other ‘Neglected’ Parties in Child Protective Proceedings: Parents in Poverty and the Role of the Lawyers Who Represent Them,” 66 *Fordham L. Rev.* 2285, 2294-95 (1998); Shawn L. Raymond, Note, “Where are the Reasonable Efforts to Enforce the Reasonable Efforts Requirement?” 77 *Tex. L. Rev.* 1235, 1269, n. 130.
- ³⁴² Delphine Schrank, “Falling in Love, Giving Children a Home,” *The Washington Post*, at C05 (Nov. 18, 2007).
- ³⁴³ Council for Court Excellence, *supra* note 331, at 15.
- ³⁴⁴ *Id.* at 15.
- ³⁴⁵ In December 2006, the Government Accountability Office (GAO) found that CFSA failed to meet the following critical benchmarks of success:

- Families who are the subject of a report of neglect/abuse that is determined to be unsubstantiated are referred to an appropriate community agency for services. Target benchmark 90 percent—achievement 8 percent
- Caseworkers visit homes in which there has been abuse and neglect to ensure children can live with birth parents safely with services. Target benchmark 90 percent—achievement 61 percent
- Children placed apart from their siblings visit some or all of their siblings at least two times per month. Target benchmark 70 percent—achievement 26 percent
- Children in foster care and their birth parents visit weekly, if CFSA has a goal to reunify them. Target benchmark 85 percent—achievement 13 percent

Report to the Chairman, Committee on Government Reform, House of Representatives, “DC Child and Family Services Agency: Performance Has Improved, but Exploring Health Care Options and Providing Specialized Training May Further Enhance Performance,” GAO-06-1093, at 9 (Sept. 2006), *available at* <http://www.gao.gov/new.items/d061093.pdf>.

- ³⁴⁶ Council for Court Excellence, *supra* note 331, at 15-16.
- ³⁴⁷ *Id.* at 15-17.
- ³⁴⁸ DC Kids Count Collaborative, *supra* note 306, at 47.
- ³⁴⁹ *Id.* at 17.
- ³⁵⁰ Council for Court Excellence, *supra* note 331, at 19.
- ³⁵¹ *Id.* at 17.
- ³⁵² *Id.*
- ³⁵³ Testimony of Cornelia M. Ashby, Director of Education, Workforce, and Income Security Issues before the DC Subcommittee, Committee on Government Reform, House of Representatives, “Progress Made Toward Planned Transition and Interagency Coordination, but Some Challenges Remain,” PL-107-114 (Jan. 8, 2002).
- ³⁵⁴ *Id.*
- ³⁵⁵ DC Superior Court, “Family Court Progress Report,” at 12 (Oct. 3, 2003).
- ³⁵⁶ The 2003 DC Bar Foundation report also identified a major need for more resources in the family law area.
- ³⁵⁷ In considering the number of organizations that ranked family law first, it should be noted that there are a number of providers in the District that focus exclusively or almost exclusively on family law and/or domestic violence matters—*e.g.*, CLC, WEAVE and Break the Cycle.
- ³⁵⁸ For purposes of this report, “generalist” organizations refer to NLSR, Bread, LAS,

Archdiocesan Legal Services and the DC Bar Pro Bono Program.

- ³⁵⁹ D.C. Code § 16-1001, *et seq.* (2007).
- ³⁶⁰ In the District, the Family Court processes and adjudicates all actions involving families or children in the DC Superior Court. In addition to the Marriage Bureau and the Central Intake Center, Family Court has five branches: (1) Domestic Relations Branch, handling divorce, annulment, custody and adoption; (2) Paternity & Support Branch, handling actions seeking to establish paternity and child support; (3) Juvenile & Neglect Branch, handling cases involving children alleged to be delinquent, neglected, abused or otherwise in need of supervision; (4) CCAAN, which recruits, trains and assigns attorneys to represent children, eligible parents and caretakers in child abuse and neglect proceedings; and (5) Mental Health & Mental Retardation Branch, handling matters involving the commitment of individuals who are mentally ill or who have an intellectual disability. *See* DC Courts, *supra* note 118, at 70.
- ³⁶¹ Since the government is usually the plaintiff in child support cases, the rate of *pro se* representation for plaintiffs is less than 1 percent. *See* Appendix H.
- ³⁶² *See* Appendix H. The Domestic Violence Unit of the DC Superior Court processes civil protection orders, criminal misdemeanors, child support and custody, visitation and divorce cases in which domestic violence is a significant issue. *See* DC Courts, *supra* note 118, at 68.
- ³⁶³ Farmer & Tiefenthaler, *supra* note 317, at 3. The study found that the other two primary factors were improvements in women’s economic status and the aging of the population. *See id.* at 19 (“The continued expansion of the availability of civil legal services will likely continue to lower the incidence of intimate partner abuse in the future.”).
- ³⁶⁴ DC Kids Count Collaborative, “Every Kid Counts in the District of Columbia: 12th Annual Fact Book” (2005). In 2007, 69,700 children were eligible for Medicaid and State Children’s Health Insurance Program and 36,740 children were eligible for food stamps. DC Kids Count Collaborative, *supra* note 306.
- ³⁶⁵ DC Fiscal Policy Institute, “Meeting DC’s Challenges, Maintaining Fiscal Discipline: Strengthening Families and Neighborhoods by Increasing Incomes and Reducing Poverty” (Feb. 2007), *available at* <http://dcfpi.org/?p=70>.
- ³⁶⁶ *Id.*
- ³⁶⁷ U.S. Social Security Administration, “State Statistics, December 2005,” *available at* http://www.ssa.gov/policy/docs/factsheets/state_stats/2005/dc.html.
- ³⁶⁸ *Id.*

- ³⁶⁹ *Id.* This number included 46,350 retired workers, 6,490 widows and widowers, 9,600 disabled workers, 2,240 spouses and 6,510 children.
- ³⁷⁰ U.S. Social Security Administration, “Annual Statistical Report on the Social Security Disability Insurance Program 2005,” *available at* http://www.ssa.gov/policy/docs/statcomps/di_asr/2005/sect03f.html.
- ³⁷¹ National Center for Children in Poverty, “State Profiles, District of Columbia” (2006).
- ³⁷² The Urban Institute, “Food Stamp Participation and Market Access in the District of Columbia” (Jun. 2006).
- ³⁷³ DC Kids Count Collaborative, *supra* note 364 (noting the number of families who applied and were eligible for food stamps decreased slightly in 2007).
- ³⁷⁴ The Urban Institute, *supra* note 372.
- ³⁷⁵ DOH: Medical Assistance Administration, *available at* <http://doh.dc.gov/doh/cwp/view,a,3,q,573226,dohNav,333451.asp>.
- ³⁷⁶ DOH, “Working Together for Health-Medicaid Annual Report FY 2005,” *available at* http://doh.dc.gov/doh/frames.asp?doc=/doh/lib/doh/services/medicaid/pdf/medicaid_annual_2005_final.pdf.
- ³⁷⁷ *Id.*
- ³⁷⁸ DOH: Health Care Safety Net Administration, *available at* http://doh.dc.gov/doh/cwp/view,a,3,q,573198,dohNav_GID,1802,dohNav,332001.asp.
- ³⁷⁹ *Id.*
- ³⁸⁰ DOH, Health Care Safety Net Administration, “Alliance Statistics as of September 30, 2006,” *available at* http://dchealth.dc.gov/doh/frames.asp?doc=/doh/lib/doh/services/health_care_safety_net/pdf/fiscal_year_06_web_page_as_of_9-30-06.pdf.
- ³⁸¹ Alicia Ault, “Uninsured? You’re Not Alone,” *The Washington Post*, at HE01 (Oct. 16, 2007).
- ³⁸² *See* Testimony of Brian L. Wilson, Interim Director before the Counsel, Committee on Human Services, Department of Human Services, “Public Roundtable on the Inspector General’s Report on the DC Village Emergency Shelter for Homeless Families” (Feb. 12, 2007), *available at* <http://newsroom.dc.gov/file.aspx/release/10689/DC%20Village%20Hearing%20Testimony%20%2012%20071.pdf>
- ³⁸³ *Id.*
- ³⁸⁴ *Id.*
- ³⁸⁵ DC is Electric, “DCEO Energy Assistance Programs,” *available at* <http://www.dcelectric.com/energyprograms.html>.
- ³⁸⁶ *See* Phillips & Beasley, *supra* note 48, at 2.
- ³⁸⁷ Cunningham, *supra* note 70, at 32.

- ³⁸⁸ *Id.* at 33.
- ³⁸⁹ *Id.*
- ³⁹⁰ Butler, *supra* note 275, at 6-7.
- ³⁹¹ See DC Department of Health Bureau of Epidemiology and Health Risk Assessment, "District of Columbia 2004 Annual Report," available at http://doh.dc.gov/doh/frames.asp?doc=/doh/lib/doh/services/administration_offices/phsa/behavioral_risk/pdf/brfss_2004_annual_report_101106.pdf.
- ³⁹² Catherine Arnst, "Say Aloha to Long Life," *Business Week*, (Sept. 11, 2006).
- ³⁹³ The Center for an Accessible Society, "Disability and the 2000 Census: What Reporters Need To Know," available at <http://www.accessiblesociety.org/topics/demographics-identity/census2000.htm>.
- ³⁹⁴ See *supra* Section IV.E.1 (discussing poverty and disability).
- ³⁹⁵ Glenn T. Fujiura, "Emerging Trends in Disability" (2001), available at <http://www.prb.org/Articles/2001/EmergingTrendsInDisability.aspx>.
- ³⁹⁶ See *supra* Section VI.F.1 (further discussion of the various health insurance programs for low-income residents).
- ³⁹⁷ Between 2004 and 2006, an average of 12.4 percent of District residents did not have health insurance compared to 15.3 percent nationally. See U.S. Census Bureau, "Income, Poverty, and Health Insurance Coverage in the United States: 2006," at 24 (Aug. 2007).
- ³⁹⁸ See Jennifer King & The State Planning Grant Team, "Insurance and Uninsurance in the District of Columbia" (Sept. 2005).
- ³⁹⁹ See DOH, *supra* note 380.
- ⁴⁰⁰ See DC Primary Care Association, "Where We Are, Where We Need to Go: The Primary Care Safety Net in the District of Columbia 2005 Update," available at http://www.dcpca.org/index.php?option=com_content&task=view&id=96&Itemid=112. See also Nicole Lurie & Martha Ross, "Health Status and Access to Care Among Low-Income Washington DC Residents," (Oct. 2006), available at http://www.dcpca.org/index.php?option=com_content&task=view&id=705&Itemid=79.
- ⁴⁰¹ See National Center for Children in Poverty, *supra* note 63; U.S. Census Bureau, Current Population Survey, "2007 Annual Social and Economic Supplement," available at http://pubdb3.census.gov/macro/032007/health/h05_000.htm.
- ⁴⁰² Randall R. Barbjerg, *et al.*, The Urban Institute, "Improving Health Insurance Coverage in the District of Columbia" (May 1, 2006), available at <http://www.urban.org/publications/411312.html>.
- ⁴⁰³ DC Action For Children, "What's In It For Kids?" (Sept. 2005). Mary Otto, "For Want of a Dentist," *The Washington Post*, at B1 (Feb. 28, 2007) (notes that the city has said that it has done a better job of reaching children in recent years).
- ⁴⁰⁴ Otto, *supra* note 403.
- ⁴⁰⁵ DC Action for Children, *supra* note 403.
- ⁴⁰⁶ See DC government's fiscal year 2008 Proposed Budget and Financial Plan, Vol. 2B, at E-29, *et seq.* (Mar. 23, 2007), available at http://cfo.dc.gov/cfo/frames.asp?doc=/cfo/lib/cfo/budget/2008/Volume_2B_web.pdf
- ⁴⁰⁷ Substance Abuse and Mental Health Services Administration (SAMHSA), "Substate Estimates from the 2002-2004 National Surveys on Drug Use and Health" (Aug. 2006).
- ⁴⁰⁸ Bill Myers, "Critics: Detention Facilities Overcrowded, Over Budget," *The Examiner*, at 5 (Nov. 29, 2005).
- ⁴⁰⁹ Susan Levine, "Detox Center Inches Toward Better Days," *The Washington Post*, at T3 (Sept. 8, 2005).
- ⁴¹⁰ Budget Advocacy Project, "Analysis of the Proposed FY 2008 Budget for the Department of Health," available at <http://www.dckids.org/documents/downloads/BAP-HealthBudgetSummaryFY2008-041107.pdf> (Apr. 11, 2007).
- ⁴¹¹ *Id.*; Sewell Chan, "DC Study Finds 10 percent Addicted," *The Washington Post*, at B5 (Oct. 2, 2003).
- ⁴¹² See DOH, "District of Columbia HIV/AIDS Epidemiology Annual Report" (Nov. 19, 2007), available at http://doh.dc.gov/doh/frames.asp?doc=/doh/lib/doh/services/administration_offices/hiv_aids/pdf/epidemiology_annual_2007.pdf.
- ⁴¹³ *Id.*
- ⁴¹⁴ *Id.*
- ⁴¹⁵ DOH, HIV/AIDS Administration, "Youth and HIV Prevention Initiative Plan 2007-2010" (Jun. 27, 2007), available at http://doh.dc.gov/doh/frames.asp?doc=/doh/lib/doh/services/administration_offices/hiv_aids/pdf/hiv_youth_prevention_initiative_4.pdf.
- ⁴¹⁶ *Id.*
- ⁴¹⁷ DOH, Administration for HIV Policies and Programs, "Comprehensive Plan for HIV Health and Support Services 2006—2008," available at http://doh.dc.gov/doh/frames.asp?doc=/doh/lib/doh/services/administration_offices/hiv_aids/pdf/2006-2008_comprehensive_plan_hiv.pdf.
- ⁴¹⁸ WWLC, HIV/AIDS Services-Legal Services, available at http://www.wwc.org/hiv_aids_services/legal_services.html.
- ⁴¹⁹ See Appendix H.
- ⁴²⁰ The health/disability areas of law have a significant degree of overlap with public benefits issues. For instance, one must prove disability in order to qualify for some social security benefits. Therefore, many of the legal needs discussed in the public benefits section are equally applicable here.
- ⁴²¹ MRDDA has been renamed the Department of Disability Services (DDS), which is a separate Cabinet-level agency in the District. DDS serves residents with intellectual and other development disabilities.
- ⁴²² These cases include a longstanding lawsuit against the District over the care, treatment, education and training for the residents of Forest Haven, which was the District's institution for people with developmental disabilities. As a result of the litigation, Forest Haven closed in 1991, but issues continue surrounding the treatment of former residents. The litigation also led to the creation of another legal services provider, the Quality Trust for Individuals with Disabilities. ULS also serves as counsel in a class action lawsuit against the DC Housing Authority on behalf of people with mobility disabilities in the District who need wheelchair accessible public housing. The parties signed a consent order in 2002, and implementation of the agreement is continuing.
- ⁴²³ U.S. Census Bureau, 2006 American Community Survey, at B21002, available at <http://www.census.gov/acs/www/index.html>.
- ⁴²⁴ Mary Cunningham, *et al.*, National Alliance to End Homelessness & Homelessness Research Institute, "Vital Mission: Ending Homelessness Among Veterans," at 6 (Nov. 2007), available at www.naeh.org/files/1839_file_vital_mission_final.pdf.
- ⁴²⁵ "Study: Thousands of Veterans Returning With Mental Illness," CNN.com, (Mar. 13, 2007) (citing Karen S. Seal, *et al.*, "Bringing the War Back Home," *Internal Medicine* (Mar. 12, 2007)), available at <http://www.cnn.com/2007/US/03/12/stress.troops/index.html>. This study done by the University of California, San Francisco and the San Francisco VA Medical Center found that nearly one-third of the over 100,000 veterans studied who received care from the Veterans Administration (VA) suffered from mental health or psychosocial issues. The authors of the study commented that their results "may overestimate the burden of mental health disorders because veterans with mental health disorders may be more likely to seek treatment at a VA facility than those without." *Id.*
- ⁴²⁶ See *supra* Section VI.A.
- ⁴²⁷ Fannie Mae Foundation & The Urban Institute, "Housing in the Nation's Capital," at 31 (2002), available at <http://www.fanniemaefoundation.org/publications/reports/hnc/2002/hnc2002.html>.
- ⁴²⁸ *Id.* at 35.
- ⁴²⁹ Fannie Mae Foundation & The Urban Institute, "Housing in the Nation's Capital," at 37 (2004), available at <http://www.fanniemaefoundation.org/publications/reports/hnc/2004/hnc2004.html>.

- ⁴³⁰ Fannie Mae Foundation & The Urban Institute, "Housing in the Nation's Capital," at 7 (2006), *available at* <http://www.fanniemae.org/publications/reports/hnc/2006/hnc2006.html>.
- ⁴³¹ DC Fiscal Policy Institute, "New Census Data Show DC's Affordable Housing Crisis is Worsening," at 1 (Sept. 13, 2005).
- ⁴³² DC Fiscal Policy Institute, "Meeting DC's Challenges, Maintaining Fiscal Discipline: Preserving and Expanding Affordable Housing," at 2 (Feb. 1, 2007).
- ⁴³³ Peter A. Tatian, DC Housing Monitor & The Urban Institution, "District of Columbia Housing Monitor: Spring 2007," at 3 (Jun. 28, 2007), *available at* <http://www.urban.org/publications/311492.html>. *See also id.* at 12 ("Income levels are expressed as HUD income categories, which are based on percentages of the area median income (AMI).").
- ⁴³⁴ *Id.* at 12-13.
- ⁴³⁵ *Id.* at 13.
- ⁴³⁶ Fannie Mae Foundation, "The Poorest Become Poorer: A Report on Patterns of Concentrated Neighborhood Poverty in Washington, D.C.," at 52 (2003), *available at* http://www.fanniemae.org/programs/pdf/Housing_in_the_Nation_2003_ch7.pdf. High poverty tracts are defined as those with more than 30 percent of persons below the poverty line and extreme-poverty tracts are defined as those with poverty rates greater than 40 percent. *Id.*
- ⁴³⁷ Divera Cohn, "DC Pockets of Poverty Growing," *The Washington Post* (May 18, 2003).
- ⁴³⁸ Fannie Mae Foundation & The Urban Institute, *supra* note 430.
- ⁴³⁹ Pascale M. Joassart-Macelli, *et al* "Fiscal Consequences of Concentrated Poverty in a Metropolitan Region," at 4 (2005).
- ⁴⁴⁰ D.C. Code §§ 6-1051 to 6-1054 (2007).
- ⁴⁴¹ Task Force, "Homes for an Inclusive City: A Comprehensive Housing Strategy for Washington, DC" (Apr. 5, 2006), *available at* http://www.brookings.edu/metro/gwrp/20060405_housingstrategy.pdf.
- ⁴⁴² *Id.*
- ⁴⁴³ DC Mayor's Draft, "Comprehensive Plan for the District of Columbia: Growing an Inclusive City, from Vision to Reality" (Jul. 2006); G. Thomas Kingsley & Barika X. Williams, The Urban Institute, "Policies for Affordable Housing in The District of Columbia: Lessons From Other Cities" (Jan. 2007), *available at* www.urban.org/UploadedPDF/411568_affordable_housing.pdf. A city's Comprehensive Plan provides policy and planning guidance on the physical development and redevelopment of the city. DC Office of Planning, "Growing an Inclusive City: From Vision to Reality" (Nov. 2005), *available at* http://cs.ona.dc.gov/cs/lib/cs/CSIV/CSIV_Comp_Plan_Update.pdf.
- ⁴⁴⁴ DC Mayor's Draft, *supra* note 443.
- ⁴⁴⁵ Kingsley, *supra* note 443.
- ⁴⁴⁶ D.C. Code §§ 42-3401.01 to 42-3405.13 (2007).
- ⁴⁴⁷ D.C. Code § 42-3404.02(a)(2007).
- ⁴⁴⁸ D.C. Code § 42-3404.06(2007).
- ⁴⁴⁹ Georgetown University Law Center's Harrison Institute for Public Law, "An Analysis of the Strengths and Deficiencies of Washington, DC's Tenant Opportunity to Purchase Act," at 3, 9 (Summer 2006).
- ⁴⁵⁰ D.C. Code § 42-3404.11 (2007).
- ⁴⁵¹ Georgetown University Law Center's Harrison Institute for Public Law, *supra* note 449 at 11, 12.
- ⁴⁵² *Id.*
- ⁴⁵³ Julia Reynolds, "Preserving Affordable Housing in the District of Columbia," *Washington Lawyer* (Jun. 2006), *available at* www.dcbar.org/for_lawyers/resources/publications/washington_lawyer/june_2006/affordable_housing.cfm. The DC Bar Pro Bono Program sought to assist tenants seeking to assert their TOPA rights by creating the Affordable Housing Preservation Project in 2005 to connect low-income tenants with attorneys. *Id.*
- ⁴⁵⁴ Deputy Mayor for Planning and Economic Development (DMPED): New Communities Guiding Principles, *available at* <http://dcbiz.dc.gov/dmped/cwp/view,A,1365,Q,605510.asp>.
- ⁴⁵⁵ *See, e.g.*, DC Affordable Housing Alliance, "DC Affordable Housing Alliance Policy Briefs," at 16-17 (Nov. 2006) (noting that "a viable plan for making the new housing affordable for families that make less than \$20,000 per year is still outstanding. There has also been little discussion of whether New Communities projects will create homeownership opportunities for formerly renting families with extremely low-incomes. If not, the city will likely have to address the issue associated with creating new developments in which most (if not all) of the market rate tenants and many of the moderate-income tenants are owners while all of the low-income tenants are renters."), *available at* <http://www.washingtonregion.net/programs/pdf/AHAPolicyBriefs%20updated-11-01-06.pdf>.
- ⁴⁵⁶ Robert E. Pierre, "Trust Fund Makes Headway, Report Says," *The Washington Post*, at B02 (Apr. 20, 2007).
- ⁴⁵⁷ *Id.*
- ⁴⁵⁸ *Id.*
- ⁴⁵⁹ Maribeth DeLorenzo & Angie Rodgers, "The District's Housing Production Trust Fund Has Developed Thousands of Affordable Units Since FY 2001," at 2-3 (Apr. 19, 2007).
- ⁴⁶⁰ Yolanda Woodlee, "Agency is Updating Housing Aid Wait List," *The Washington Post*, at B04 (Jan. 16, 2008); Dena Levitz, "DC Seeks to Prune Housing Wait List," *The Examiner* (Jan. 10, 2008).
- ⁴⁶¹ Levitz, *supra* note 460 (quoting Christine Campbell, director of Housing Works, a nonprofit assisting people with HIV/AIDS seeking housing).
- ⁴⁶² Neighborhood Info DC, "District of Columbia Housing Monitor," at 9, *available at* <http://www.neighborhoodinfodc.org/housing/>. Based on past experience, many of the contracts for these units may be renewed, but for shorter terms. *Id.*
- ⁴⁶³ Woodlee, *supra* note 460.
- ⁴⁶⁴ *Id.*
- ⁴⁶⁵ *Id.*
- ⁴⁶⁶ *Id.*
- ⁴⁶⁷ The Homeless Services Planning & Coordinating Committee, "Homeless Enumeration for the Washington Metropolitan Region 2007," at 3-4 (Jun. 13, 2007).
- ⁴⁶⁸ *Id.*
- ⁴⁶⁹ *Id.*
- ⁴⁷⁰ Elissa Silverman, "Families in District Struggling for Shelter," *The Washington Post*, at C1 (Oct. 22, 2006).
- ⁴⁷¹ DC Kids Count Collaborative, *supra* note 306, at 42.
- ⁴⁷² *Id.*
- ⁴⁷³ Silverman, *supra* note 470.
- ⁴⁷⁴ The Homeless Services Planning and Coordinating Committee, *supra* note 467, at 25 (2007).
- ⁴⁷⁵ *Id.*
- ⁴⁷⁶ Steve Vogel, "Many DC Veterans Homeless, Study Says," *The Washington Post*, at B01 (Nov. 8, 2007).
- ⁴⁷⁷ *Id.*
- ⁴⁷⁸ D.C. Code §§ 4-751.01 to 4-756.02 (2007).
- ⁴⁷⁹ *Id.* at § 4-753.01(a).
- ⁴⁸⁰ *Id.* at § 4-754.01.
- ⁴⁸¹ *Id.* at § 4-754.11 (identifying client rights generally); *Id.* at § 4-754.12 (identifying additional client rights for those in temporary shelter or supportive housing); *Id.* at § 4-754.21 to § 4-754.25.
- ⁴⁸² *Id.* at § 4-754.38(a), (c).
- ⁴⁸³ Joy Phillips, *et al*, DC Office of Planning, State Data Center, "District of Columbia Population and Housing Trends," (Fall 2005) (relying on 2000 Census data).
- ⁴⁸⁴ Statement of Rufus G. King, III, Chief Judge, DC Superior Court, Before the Council of the DC Committee of the Whole (Apr. 11, 2006).
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- 492 Carroll Seron, *et al.*, “The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City’s Housing Court: Results of a Randomized Experiment,” 35 *Law & Soc’y Rev.* 419 (2001).
- 493 “A Dip in Evictions,” *The Washington Post*, at B01 (Mar. 19, 2008), *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/18/AR2008031802917.html>.
- 494 Fannie Mae Foundation & The Urban Institute, *supra* note 427, at 40 (noting that nationally, almost 70 percent of homeless children transfer schools at least once each year and that, with each transfer, those children fall four to six months behind academically). *See also* Homes for the Homeless, “Inside the Beltway: The State of Homeless Children in Washington, DC,” at 2 (1999).
- 495 Fair Budget Coalition, “Sharing Opportunity in a Time of Prosperity, A Fair Budget for All DC Taxpayers,” at 25, 32 (2007).
- 496 DHCD, “Analysis of Impediments to Fair Housing Choice in the District of Columbia,” at 5 (2005).
- 497 *Id.* at 13.
- 498 D.C. Code § 42-2851.06(c) (2007).
- 499 DHCD, *supra* note 496, at 5.
- 500 *Id.* at 14.
- 501 *Id.* at 18–20.
- 502 *Id.* at 20–24 (noting that “the District of Columbia has many recent immigrants who, either because of cultural or language barriers, are not aware of their fair housing rights. ...Language barriers, knowledge of the laws, and apprehension about asserting fair housing rights based on immigrant status are some of the factors that contribute to immigrant housing discrimination.”)
- 503 Henri E. Cauvin, “Pro Bono Programs Bring Civil Support,” *The Washington Post*, at DZ01 (Aug. 30, 2007).
- 504 *Id.*; Thomas Adcock, “Pro Bono Projects Helps Seniors with a Taxing Program,” *New York Law Journal* (Sept. 4, 2007).
- 505 *Id.*; Cauvin, *supra* note 503.
- 506 Office of Tax & Revenue: Senior Citizen or Disabled Property Owner Tax Relief, *available at* <http://otr.cfo.dc.gov/otr/cwp/view,A,1330,Q,594261,otrNav,33280>.asp.
- 507 Notably, the five “generalist” legal services providers that responded to the survey each included housing in the top four subjects in which they receive the most requests for legal services. Four of the five ranked housing as the area in which they received the most requests for legal services.
- 508 Similarly, the 2003 DC Bar Foundation Report identified the need for additional affordable housing as the biggest challenge facing low-income people in the District and the greatest need for legal services providers to address. The report also found that there was little transactional representation or support for tenant organizations, and only one program had done more than minimal work on predatory lending or other issues facing homeowners. *See* DC Bar Foundation Report, *supra* note 21, at 13.
- 509 *See* Appendix H.
- 510 *Id.*
- 511 *Id.*
- 512 *Id.*
- 513 Butler, *supra* note 275, at 9.
- 514 *Id.*
- 515 *Id.* at 10.
- 516 *Id.* at 10.
- 517 D.C. Code Sec. 42-3531.07(1).
- 518 *Id.* at Sec. 42.3531.07(2).
- 519 OTA Press Release, “There’s Always Room for Tenants at the Office of the Tenant Advocate,” Oct. 1, 2007, *available at* <http://newsroom.dc.gov/show.aspx/agency/ota/section/2/release/11915>.
- 520 The “one strike, you’re out” rule requires public housing authorities to use leases which call for a tenant’s eviction if the tenant, a member of his or her household or guest engages in any criminal activity on or near a public housing premises.
- 521 DC Bar Foundation, *supra* note 26.
- 522 The Urban Institute, “A Profile of Low-Income Working Immigrant Families” (2005).
- 523 Campbell Gibson & Kay Jung, U.S. Census Bureau, Population Division, “Historical Census Statistics on the Foreign Born Population of the United States: 1850–2000” (Feb. 2006).
- 524 Audrey Singer, The Brookings Institution, “At Home in the Nation’s Capital: Immigrant Trends in Metropolitan Washington” (2003); Audrey Singer, *et al.*, The Brookings Institution, “The World in a Zip Code: Greater Washington, DC as a New Region of Immigration” (2001); Audrey Singer, The Brookings Institution, “Polyglot Washington: Language Needs and Abilities in the Nation’s Capital” (2004).
- 525 U.S. Census Bureau, 2006 American Community Survey, *available at* http://factfinder.census.gov/home/saff/main.html?_lang=en.
- 526 DC Office of Latino Affairs: Demographics, *available at* <http://ola.dc.gov/ola/cwp/view,A,3,Q,568739>.asp.
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- 529 Migration Policy Institute, Fact Sheet on the Foreign Born, *available at* <http://www.migrationinformation.org/datahub/state.cfm?ID=DC>.
- 530 DC Office of Latino Affairs: Characteristics of Latinos in the District of Columbia, *available at* <http://ola.dc.gov/ola/cwp/view,a,3,q,568753,olaNav,32535>.asp.
- 531 *Id.*
- 532 DC Office of Asian and Pacific Islander Affairs: APIA Census Data, *available at* <http://www.apia.dc.gov/apia/cwp/view,a,3,q,635274,PM,1,apiaNav,31474>.asp.
- 533 DC Office of Asian and Pacific Islander Affairs: Asian/Pacific American Community in DC, *available at* <http://www.apia.dc.gov/apia/cwp/view,a,3,q,524744,apiaNav,31474>.asp.
- 534 *Id.*
- 535 Migration Policy Institute, *supra* note 529.
- 536 Jill Wilson, The Brookings Institution, “African Immigrants in Metropolitan Washington: A Demographic Overview” (2003).
- 537 Alan King, “A Beacon Shines for African Immigrants in the Nation’s Capital,” *New America Media* (Aug. 13, 2006), *available at* http://news.newamericamedia.org/news/view_article.html?article_id=f2f87f6ceca0808be0a8a44a8f2e9b6b.
- 538 Megan Greenwell, “Out of Africa, Into Helpful Hands,” *The Washington Post* (Jul. 27, 2006).
- 539 Singer, “At Home in the Nation’s Capital: Immigrant Trends in Metropolitan Washington,” *supra* note 524, at 10.
- 540 *Id.* at 13.
- 541 U.S. DOJ, Executive Office of Immigration Review, Office of Planning, Analysis & Technology, “FY 2006 Statistical Year Book” (Feb. 2007) (Baltimore, Maryland and Arlington, Virginia courts), *available at* <http://www.usdoj.gov/eoir/statspub/fy06syb.pdf>.
- 542 American Immigration Lawyers Association, Letter to Executive Office of Immigration Review, “Comments to Proposed Codes of Conduct for Immigration Judges and BIA Board Members” (Jul. 30, 2007), *available at* <http://www.aiala.org/content/default.aspx?docid=23005>.
- 543 As in many of the subject areas, the private bar also handles immigration matters, but generally does not focus its practice on those living in poverty.
- 544 *See, e.g.*, Bill Turque, “Herndon to Shut Down Center for Day Laborers,” *The Washington Post*, at A01 (Sept. 6, 2007); Christy

- Goodman, “Manassas to Study County Immigration Measures,” *The Washington Post*, at PW04 (Jul. 15, 2007).
- ⁵⁴⁵ U.S. Citizenship and Immigration Services, Immigration Forms, *available at* <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=db029c7755cb9010VgnVCM1000045f3d6a1RCRD&vgnextchannel=db029c7755cb9010VgnVCM1000045f3d6a1RCRD>.
- ⁵⁴⁶ Several other states have attempted to calculate the legal needs of the low-income community by relying on telephone surveys of low-income households. These studies found that low-income households have, on average, between 1.1 and 3.5 legal needs per year. *See* Echols, *supra* note 19, at 32.
- ⁵⁴⁷ *Id.*; LSC, “Documenting the Justice Gap in America” (2005).
- ⁵⁴⁸ DC Bar Foundation, *supra* note 21; Cunningham, *supra* note 70.
- ⁵⁴⁹ *See* Appendix H.
- ⁵⁵⁰ *See supra* Section IV.C. to D.
- ⁵⁵¹ Statement of Eric T. Washington, *supra* note 7.
- ⁵⁵² There were nearly 50,000 people sued in Landlord/Tenant Court in 2005, but about 20,000 of these defendants had their cases dismissed prior to the initial court date. The representation rate includes the representation by pro bono attorneys.
- ⁵⁵³ *See* Appendix H.
- ⁵⁵⁴ A success story in this regard is Medicare Part D. Following the program’s creation, it became clear that people who were elderly and poor and persons with disabilities would be most affected. WWLC, LAS and the State Health Insurance Counseling Project banded together, trained a cadre of pro bono lawyers and held clinics throughout the District. As a result, hundreds of clients obtained access to services. For a further discussion of Medicare Part D, see *supra* Section VI.F.
- ⁵⁵⁵ The 2003 DC Bar Foundation report also found that the lack of systemic initiatives was a major concern of legal services providers and their ability to change the underlying conditions that their clients face. *See* DC Bar Foundation, *supra* note 21, at 6, 14-15.
- ⁵⁵⁶ One of the larger organizations, the Legal Aid Society, started a project in 2004 that focuses on appellate advocacy. It accounts for less than 10 percent of staff time.
- ⁵⁵⁷ For instance, the Center for Responsible Lending, which is based in North Carolina but has an office in the District, was at the forefront of a legislative effort in the District that reduced the interest rate that payday lenders can charge customers. *See* Section VI.A.1.a. and *supra* notes 147-149. WLC focuses on civil rights impact litigation and policy advocacy, which can benefit District residents living in poverty.
- ⁵⁵⁸ This is even true where the legal aid organization recruits pro bono counsel. In many cases, the private lawyers may do a great deal of the work, but often client relations, fact development and outreach fall on the legal services lawyers.
- ⁵⁵⁹ While the lack of resources was, by far, the number one reason cited by providers for not engaging in more systemic work, a few reported that the bureaucracy of the DC government also hampered their efforts.
- ⁵⁶⁰ ABA, “ABA Commission on Billable Hours Report 2001-02,” at 45 (2002), *available at* <http://www.abanet.org/careercounsel/billable/toolkit/bhcomplete.pdf>.
- ⁵⁶¹ For additional information on building productive pro bono relationships between law firms and legal services providers, *see* Daniel Bruner, *et al.*, “Constructing Pro Bono Partnerships: Notes From A Dialogue Between Law Firms And Legal Services Programs” (2007) (copy on file with Commission).
- ⁵⁶² *See* DC Bar Foundation, *supra* note 21, at 16.
- ⁵⁶³ DC Bar Foundation, *supra* note 26.
- ⁵⁶⁴ Speech of Lewis Powell, then ABA President and future Supreme Court Justice, before ABA House of Delegates (1964).

APPENDIX A: Summary of Prior District Legal Needs Studies

Neighborhood Legal Services Program of the District of Columbia, 2004 Year End Needs Assessment Synopsis.

This study assessed unmet legal needs in the District by focusing on two local neighborhoods and interviewing individual residents of those neighborhoods. The study reported an increasing need for legal services in the areas of housing, consumer protection, public benefits and education.

Neighborhood Legal Services Program of the District of Columbia, 2003 Year End Needs Assessment Synopsis.

This study assessed unmet legal needs in the District by canvassing four local neighborhoods deemed to be representative of the overall community. The study reported an increasing need for legal services in the areas of employment, housing, education and juvenile matters. Certain variances were found in legal needs depending on the area of the District in question. In Northwest, immigration issues had increased prevalence. In Southeast, there was an increased need in the area of public benefits; and in Southwest, family and health issues had increased prevalence.

District of Columbia Bar Foundation, *Civil Legal Services Delivery in the District of Columbia* (September 2003). This report sets forth the results of surveys completed by 21 legal services providers in the District. These 21 organizations provided information about the substantive legal areas in which they provided services. The report noted that the majority of cases handled involved the following areas: housing (including access to public housing and eviction issues); family law; immigration/asylum; and public benefits (including TANF, Social Security). The report identified the following substantive area gaps, *i.e.*, areas of legal services where the need most severely exceeded the amount of service being provided: housing (*e.g.*, eviction, predatory lending, tenant issues) and family law (*e.g.*, protective orders, divorce, custody).

The report also identified gaps in the manner in which legal services were provided. It found that legal services providers were using a narrow range of legal strategies. The most prevalent model was provision of services on an individual basis, only after the client's situation had become an emergency. Broad-based representation and prospective, preventive advocacy were rare. Among the kinds of efforts found to be lacking were: appellate work; preventive

work/community education; transactional work/community economic development; administrative advocacy; and "unbundled" services (*i.e.*, taking on only a segment of a client's case, for example, writing a brief for a client but not accompanying the client to court).

Lynn E. Cunningham, *Legal Needs for the Low-Income Population in Washington, DC*, 5 *University of the District of Columbia Law Review* 21 (Fall 2000). The author based his conclusions on his extensive experience serving the low-income population in the District, numerous conversations with other providers in the District, and various reports generated both in the District and in other jurisdictions. He provides estimates of the number of attorneys and the matters in the following categories: processing government benefits; individual cases where an attorney is provided by the government; individual cases where an attorney is not provided by the government; systemic changes; and planning matters. He determined that roughly 90 percent of the legal needs of low-income District residents were not being met.

DC Bar Public Service Activities Corporation, *Interim Report: Survey of Unmet Civil Legal Needs in the District of Columbia* (August 1998). This report attempted to measure unmet legal needs as perceived by legal services providers in the District through surveys and follow-up interviews with 15 providers. The report determined that there were numerous areas of unmet civil legal need in the District. Particular subject matter areas identified by two or more providers included consumer issues (three providers identified this area); employment (three); immigration (three); bankruptcy (two); domestic relations (two); mental health (two); and workers compensation (two). Other areas identified included landlord-tenant, public benefits, small claims, civil rights, tax, probate, unemployment compensation, veterans' issues, and emergency cases generally. The report stated that its findings were generally consistent with those contained in a 1994 ABA report, except that immigration issues and employment were found to be more pressing locally than they were nationally.

Two other surveys also bear mention. The first is the 1994 report by the ABA entitled “Legal Needs and Civil Justice: a Survey of Americans.” This study attempted to measure, on a nationwide basis, the legal needs of low- and moderate-income Americans. The report was based on over 3,000 interviews conducted in person and by telephone. The study found, *inter alia*, (1) that about half of low- and moderate-income American households faced one or more situations that could be addressed through legal means; (2) that well over half of those issues did not find their way into the justice system; (3) that the most common legal needs faced by these residents involved personal finances, consumer issues, housing (both owned and rented), and other real property; (4) that most of the people tried to deal with these situations on their own, *i.e.*, without turning to lawyers; (5) that the legal needs most likely to be dealt with through the legal system involved family and domestic issues; and (6) that reasons for not trying to get legal assistance included the belief that no help would be gained, fear of cost, and the view that the problem could be dealt with without involving lawyers and the legal system.

Second, in 2005, the Legal Services Corporation (LSC) published a national report entitled “Documenting the Justice Gap in America.” This report measured unmet legal needs using three different methodologies: (1) asking LSC providers to document the number of people seeking legal assistance who could not be served due to insufficient program resources; (2) analysis and comparison of recent state-based legal needs studies; and (3) calculating the ratio of legal aid attorneys to the low-income population, and comparing that to the ratio of private attorneys to the general population. The study found that for every person served by a LSC-funded program, at least one person seeking help will be turned down due to insufficient resources, and that perhaps less than 20 percent of the legal problems faced by low-income people are addressed with the assistance of a private lawyer or a legal aid lawyer. The study found unmet legal needs in the areas of, *inter alia*, consumer, education, employment, family law, juvenile, health, and housing.

APPENDIX B: Legal Services Provider Questionnaire

Instructions

The focus of this questionnaire is solely on **civil** legal needs so please construe any phrase in this survey such as “legal needs” or “legal assistance” to refer only to civil legal matters.

To assist the Commission in processing the information you provide, please fill out the attached questionnaire electronically. The following tips will assist you in that process.

- The questionnaire has been set up in a manner which will allow you to easily navigate throughout the document. After answering the first question, simply use any one of the arrow keys (◀ ▶ ▶ ▼) on your keyboard to move to the next portion of the questionnaire which may require a response.
- Throughout the questionnaire, there are questions which ask you to respond by placing an “X” in the appropriate box(es). To place an “X” in these boxes, simply press the spacebar on your keyboard. If you decide that you no longer want an “X” to appear in a box, press your spacebar again and the “X” will be deleted.
- The entire width of the questionnaire should be visible on your computer screen. If it is not, please try reducing the size of the document down to 75% or 80%. You may do this via the “Standard” toolbar, which you can open using the “View” pull down menu at the top of your screen.
- A number of questions ask you to refer to Appendix A, which appears at the end of the questionnaire. We strongly recommend that you print out a copy of the questionnaire before you begin to fill out the survey so that you will have a copy of the Appendix available for easy reference.
- To ensure that none of your answers are lost due to technical difficulties, please save a copy of the form to your desktop and frequently save your answers as you complete the questionnaire.

Thank you in advance for your assistance and cooperation. Please return the completed survey to Sara Moghadam, Esq, at sara.moghadam@dlapiper.com **by October 27, 2006**. Should you have any questions regarding the questionnaire, please contact Sunil Mansukhani (202-344-4441 or sunil.mansukhani@dcaccesstojustice.org), or Sara Moghadam (202-861-3959 or sara.moghadam@dlapiper.com).

Questionnaire

DISTRICT OF COLUMBIA
ACCESS TO JUSTICE COMMISSION

MAPPING OF NEEDS PROJECT

LEGAL SERVICES PROVIDERS QUESTIONNAIRE

I. General Information

1. Name and e-mail address of person completing questionnaire:

E-mail:

2. Name of organization:

3. Position in organization:

4. Date questionnaire completed:

5. Throughout the survey, the Commission asks for data concerning your organization for calendar year 2005.

If your organization has a fiscal year that does not correspond to the calendar year, please answer the questions in this survey using the fiscal year that includes at least seven months in calendar year 2005. If the fiscal year runs from July 1 to June 30, please use the fiscal year that begins on July 1, 2005.

Does your organization keep records by calendar year?

Yes. Proceed to Question 6.

No. Please specify the time period of the fiscal year you will use in completing this survey (e.g., October 1, 2004 – September 30, 2005).

Time Period:

II. The Legal Needs of District of Columbia Residents

6. Using the subject areas and types of cases identified in the attached Appendix A (See the last two pages of this document), please:

(a) rank the subject area(s) in which your organization received requests for legal assistance from District residents in 2005, regardless of whether any services were provided in response to those requests. Use “1” for the subject area with the most requests; and

(b) for each subject area listed, identify the **two** types of cases where you received the most requests. E.g.,

1. Family Law

1. Abuse and Neglect

2. Custody/Visitation

___ **Consumer**

1. _____

2. _____

___ **Disability/Health Law**

1. _____

2. _____

___ **Education**

1. _____

2. _____

___ **Employment**

1. _____

2. _____

___ **Estate Planning/Wills/Probate**

1. _____

2. _____

___ **Family Law**

1. _____

2. _____

___ **Housing**

1. _____

2. _____

___ **Immigration/Asylum**

1. _____

2. _____

___ **Public Benefits**

1. _____

2. _____

___ **Other**

1. _____

2. _____

7. In 2005, did your organization turn away requests for legal services?

Yes. Please answer subparts (a) and (b).

No. Proceed to question 8.

(a) Please rank the top three reasons you turned away requests, with “1” being the most common reason.

___ Party making request fell outside income eligibility guidelines

___ Subject area fell outside organization’s mission/expertise

___ Conflict of interest

___ Litigation was proceeding in another jurisdiction

___ Matter did not involve DC law

___ Inadequate resources to handle matter

___ Other: _____

___ Other: _____

(b) Please rank the top three subject area(s) in which you turned away the most requests, with “1” being the subject area in which the most requests were turned away. For each subject area that was ranked, please list the case type where requests for legal assistance were turned away most often. Please see Appendix A if you have a question about the case types that fall within each subject area. E.g.,

1. Disability/Health

Mental Illness/Commitment Hearings

___ Consumer

___ Disability/Health

___ Education

___ Employment

___ Estate Planning/Wills/Probate

___ Family/Juvenile/Relational

___ Housing

___ Immigration/Asylum

residents (e.g., sign language interpreters, materials in Braille). Where appropriate, please include available accessibility features of your office (such as ramps or elevators) and assistive technology (such as TTY); and

- (c) Provide the total number of people with disabilities requesting legal services in 2005.

We recognize that in many, if not most instances, you may not know whether the person requesting legal services has a disability. This question asks only for your best estimate based on your observations.

TYPE OF DISABILITY	(A) NUMBER OF PERSONS REQUESTING LEGAL SERVICES	(B) INTERNAL RESOURCES AVAILABLE TO SERVE THE RESIDENTS' SPECIAL NEEDS
MENTAL ILLNESS/ PSYCHIATRIC DISABILITY		
COGNITIVE DISABILITY (E.G., MENTAL RETARDATION, SUSTAINED BRAIN INJURY)		
MOBILITY IMPAIRMENT— USES WHEELCHAIR		
MOBILITY IMPAIRMENT— USES CANE OR WALKER TO GET AROUND OR HAS DIFFICULTY WALKING		
BLIND OR OTHERWISE VISUALLY IMPAIRED		
DEAF OR OTHERWISE HEARING IMPAIRED		
OTHER:		
(C) TOTAL NUMBER OF PERSONS WITH DISABILITIES REQUESTING LEGAL SERVICES IN 2005:		

- 11. Is your staff instructed to assess whether District residents seeking legal assistance have civil legal needs in areas other than those initially raised by the residents themselves? If so, please include the intake instrument or describe the process your

organization uses to make this assessment.

- 12. Using the case types under each subject area heading listed in Appendix A, please rank, in order of importance, the five most unaddressed or under addressed civil legal needs confronting low income District residents, with “1” being the most important (e.g., Predatory Lending 1). When compiling the list, please consider both the number of requests for legal assistance the network of legal services providers is unable to fulfill as well as those areas where residents may not ask for help even though a lawyer may be able to assist. Please state briefly why you included a particular case type in your list.

1. _____
2. _____
3. _____
4. _____
5. _____

- 13. Please identify the types of cases, if any, in which you anticipate District residents’ need for civil legal services will increase over the next two years and state briefly why you selected this case type. Refer to Appendix A for the case types, which are bulleted under each subject area.

- 14. Please provide any additional comments concerning the **legal needs of District residents** about which the Commission should be aware.

III. The Organization's Capacity to Meet the Community's Legal Needs

A. Spending on Civil Legal Services

15. How much did your organization spend on civil legal services in 2005?

Please note:

- If your organization provides services other than civil legal services (e.g., criminal legal services, medical services, social services, etc.), your answer should include only the spending that supports the provision of civil legal services.
- If your organization provides civil legal services to non District residents, please include only the spending that supports the provision of civil legal services to District residents.
- The amount noted should reflect all expenditures used to support the provision of civil legal services, including, but not limited to, training, overhead and fundraising expenses.
- Law school clinics should exclude the spending devoted to classroom instruction from their answer, and only include the spending devoted to providing civil legal services. To get this figure, it will probably be necessary to estimate the percentage of law school clinical professors' time spent on teaching/research vs. case supervision/advocacy responsibilities and apportion the professors' salaries accordingly.

Total expenditures on civil legal services for District residents in 2005:

\$ _____

16. Please estimate the amount of your organization's spending in 2005 devoted to providing civil legal services to **District residents** that came from each of the following sources:

SOURCE	AMOUNT OF FUNDS PROVIDED
FEDERAL GOVERNMENT	\$ _____
DISTRICT OF COLUMBIA GOVERNMENT	\$ _____
FOUNDATIONS	\$ _____
CORPORATIONS	\$ _____
LAW FIRMS	\$ _____

² E.g., Investigators, legal assistants, social workers, and paid students.

³ If an Executive Director or other manager has case handling/supervision responsibilities in addition to general administrative responsibilities, please include the portion of time spent on case related work in the legal services column.

INDIVIDUAL GIVING (INCLUDING DONATIONS BY ATTORNEYS)	\$ _____
ATTORNEYS' FEES	\$ _____
OTHER:	\$ _____
	\$ _____
	\$ _____
TOTAL: (SHOULD ADD UP TO THE ANSWER PROVIDED IN RESPONSE TO QUESTION NO. 15)	\$ _____

B. Staff

17. For each category of paid employee, identify the full time equivalents (FTE) devoted to each type of work. (E.g., An Executive Director spends 20% of her time on legal services work, 20% on fundraising, and 60% on administrative matters. That person would list .2 for Fundraising and .2 for Legal Services, and .6 under General Admin.). **For organizations that provide services other than civil legal services (e.g., criminal legal services, medical services, social services, etc.), please only count employees whose work relates to the provision of civil legal services.**

	FUNDRAISING	COMMUNITY OUTREACH/ EDUCATION	GENERAL ADMIN.	OTHER	TOTAL FTE
LEGAL SERVICES					
ATTORNEY					
NON ATTORNEY PROFESSIONALS ²					
MANAGEMENT ³					
OTHER SUPPORT STAFF					

18. Please provide the **number** of full time equivalent **paid lawyers** in your organization who worked in each subject area in 2005. (e.g., If Jane Smith is a generalist who spends 1/3 of her time working on housing cases, 1/3 of her time on disability matters, and 1/3 of her time on public benefits cases, you would put .33 FTE in each of these three areas)

below). In determining time worked in a particular area, please include time spent doing all of the activities described in question 19 below, not just the time spent on individual representation.

- Consumer _____
- Education _____
- Estate Planning/Wills/Probate _____
- Housing _____
- Public Benefits _____
- Disability/Health Law _____
- Employment _____
- Family Law _____
- Immigration/Asylum _____
- Other (specify subject areas):

C. Caseload/Allocation of Resources

19. Please provide the total number of District residents your organization assisted in 2005 under 19(a). Then list the number served by each type of service described in 19(b) – 19(g) below. If more than one service was provided to a particular resident during a meeting (e.g., resident was given brief advice and a referral), please only count the most significant activity that occurred. In other words, we do not want a person to be double counted when providing answers to the sub parts of this question, unless the person sought help from your organization for different problems during the year. The numbers you list in 19(b) – 19(g) should add up to the figure you provide in 19(a).

- (a) _____ Total number of District residents served in 2005
- (b) _____ Served by full representation in litigation (representation through resolution of matter, including appeals, regardless of time spent)
- (c) _____ Served by transactional work or advice (e.g., drafting contracts, wills, tax matters, or for purposes of community and economic development)
- (d) _____ Served by limited advice/unbundled services (up to 8 hours)
- (e) _____ Served by providing referral (including a referral to pro bono counsel)
- (f) _____ Served by giving self help materials (including the materials distributed at community outreach sessions)

(g) _____ Other (please specify):

20. Using the subject areas and types of cases listed in Appendix A, please provide:

- (a) the **number** of District residents your organization represented in each subject area in 2005. For this question, we are interested in the number of people who received full representation, so do not include people served with brief advice or assistance;
- (b) the top two types of cases where you provided representation in each subject area;
- (c) the **number** of clients represented in the top two types of cases where you provided representation in each subject area;
- (d) whether the assistance you provided was on behalf of the plaintiff or defendant; and
- (e) the total **number** of cases where your organization provided full representation. The number you provide for this question should equal the figure you listed for question 19(b).

SUBJECT AREA	(A) NUMBER OF CASES WHERE FULL REPRESENTATION PROVIDED	(B) TOP TWO TYPES OF CASES WHERE FULL REPRESENTATION PROVIDED	(C) NUMBER OF CLIENTS REPRESENTED IN THE CASES IDENTIFIED IN COLUMN (B)	(D) PARTY REPRESENTED IN CASES IDENTIFIED IN COLUMN (B)
CONSUMER	1. _____ 2. _____			
DISABILITY/HEALTH	1. _____ 2. _____			
EDUCATION	1. _____ 2. _____			
EMPLOYMENT	1. _____ 2. _____			
ESTATE PLANNING/ WILLS/PROBATE	1. _____ 2. _____			

FAMILY	1. _____
	2. _____
HOUSING	1. _____
	2. _____
IMMIGRATION/ASYLUM	1. _____
	2. _____
PUBLIC BENEFITS	1. _____
	2. _____
OTHER:	1. _____
	2. _____

(E) TOTAL (SHOULD ADD UP TO 19(B)):

21. In 2005, did your organization engage in activities other than individual civil legal representation to address systemic legal issues (i.e. issues that will affect large numbers of District residents)?

- Yes. Please answer subparts (a) – (c).
- No. Proceed to question 22.
- (a) Please identify the types of activities you undertook and estimate the percentage of overall staff time devoted to each. (Please note that unless your organization devotes all of its resources to systemic efforts, the percentages identified below should not add up to 100%).
- Administrative advocacy _____ %
- Appellate advocacy _____ %
- Community and economic development _____ %
- Community organizing _____ %
- Community outreach/education _____ %
- Court reform _____ %
- Impact litigation _____ % (i.e., cases chosen from the likely impact beyond the client)
- Legislative advocacy _____ %
- Other: _____
- (b) On what case type(s) are your systemic efforts focused? Please use the case type(s) listed in Appendix A.

(c) Does your organization confront any obstacles with respect to its ability to undertake systemic initiatives?

- Yes. Please answer subparts (i) – (ii).
- No. Proceed to question 22.
- i. What are the top three obstacles?
 - 1. _____
 - 2. _____
 - 3. _____
- ii. What systematic initiatives, if any, would you like to undertake, but are unable to because of resource constraints?
 - _____
 - _____
 - _____

22. Did your organization receive referrals for civil legal services from other legal services providers, law firms, or from community groups in 2005?

- Yes. Please answer subparts (a) – (d).
- No. Proceed to question 23.
- (a) Approximately how many referrals did your organization receive?
- (b) Identify the top five sources of referrals to your organization (1 = most referrals).
 - 1. _____
 - 2. _____
 - 3. _____
 - 4. _____
 - 5. _____
- (c) Of the referrals your organization received in 2005, approximately how many fell within your organization’s mission, expertise, and income eligibility requirements?
- (d) Of the referrals identified in subpart (c), estimate the percentage of referrals your organization was able to serve. _____ %

23. Training

- (a) Please describe the training your organization provides to:
 - i. Managers:
 - ii. Line Attorneys:
 - iii. Support staff:

- iv. Law students:
 - v. *Pro Bono* attorneys:
- (b) What training, if any, would you like to provide, but are unable to because of resource constraints?
- i. Managers:
 - ii. Line Attorneys:
 - iii. Support staff:
 - iv. Law students:
 - v. *Pro Bono* attorneys:

24. Does your organization use **unpaid** law students to assist with the provision of civil legal services for District residents?

Yes. Please answer subparts (a) – (d) below.

No. Proceed to question 25.

- (a) Provide the approximate number of law students your organization worked with in 2005.
- (b) Approximately how much time does your staff spend on training and supervising law students?
- (c) Approximately how many hours were donated in 2005 by law students?
- (d) Does your organization enlist law students for services other than to assist with representation in individual cases? If so, please describe these services.

25. Does your organization rely on *pro bono* attorneys⁴ to provide or assist with providing civil legal services to District residents?

Yes. Please answer subparts (a) – (g) below.

No. Proceed to question 26.

- (a) Provide the approximate number of matters handled by these attorneys in 2005.
- (b) Approximately how much time does your staff spend advising, training, or mentoring these attorneys on cases?

(c) How are cases referred to these attorneys?

(d) Approximately how many *pro bono* hours did attorneys provide to your clients in 2005? In calculating these hours, please do not include cases that were referred in their entirety to *pro bono* attorneys to handle within their own firms or agencies.

(e) Does your organization enlist *pro bono* attorneys for services other than representation in individual cases? If so, please identify the other services for which these attorneys are used (e.g., intake, legal research, systemic efforts).

(f) Please describe what, if any, in kind support *pro bono* attorneys and law firms provide to your organization (e.g., training, providing conference rooms, administrative support).

(g) How can legal services providers make more effective use of *pro bono* attorneys?

26. Please describe any collaborative efforts (e.g., in handling cases, systemic efforts, training) your organization undertakes with other legal services providers to serve District residents.

⁴ By “pro bono attorneys,” we also intend to include those attorneys who work on an unpaid basis for a legal services organization.

27. Please describe any collaborative efforts (e.g., co location, workshops, staffing legal clinics) your organization undertakes with community-based organizations to serve District residents.

28. What are your organization's greatest limitation(s) in terms of its capacity to serve the legal needs of the District's low income community?

29. If the network of legal services providers could obtain additional resources to enhance its ability to provide services, what are the top three purposes for which these funds should be used and why?

1. _____
2. _____
3. _____

- (a) If the legal services network could receive \$3 to \$5 million more in funding, would your answer change? If so, how and why?
- (b) Other than additional funds, what change, improvement, legislation, etc. would be most helpful to your organization in the next three years?

30. Please provide any additional comments concerning **the capacity of your organization, or the capacity of the legal services network generally** that would be helpful to the Commission in its efforts to assess the capacity of legal services providers and the private bar to meet the legal needs of District of Columbia residents.

Appendix A

In this Appendix, we have endeavored to provide a comprehensive list of the subject areas (in bold) and types of cases (listed as bullet points under each subject area) for which civil legal assistance may be sought by District residents. In order to facilitate a meaningful comparison of the various survey responses, please utilize the subject area and case types below. If, however, you believe that doing so will not provide the Commission with accurate information, please utilize the "Other" category that is included as a possible response to each question that refers to this Appendix.

CONSUMER

- Banking
- Bankruptcy/debt collection
- Car purchases and repairs
- DMV related problems
- Home repair disputes
- Identity theft
- Insurance
- Predatory lending
- Small claims re: goods and services
- Student loans
- Utility terminations

DISABILITY/HEALTH

- Americans with Disabilities Act (ADA) issues in non employment context
- Mental illness/commitment hearings
- Rehabilitation Act issues in non employment context

EDUCATION

- Disciplinary proceedings
- School reform
- School transfers/access to education
- Special education

EMPLOYMENT

- ADA or Rehabilitation Act disputes in employment setting
- Criminal records as a barrier to employment
- Disability retirement
- Employment discrimination
- ERISA/COBRA/HIPPA
- Family and Medical Leave Act
- Occupational safety and health
- Sexual harassment
- Termination
- Unemployment compensation
- Wage and hour claims
- Whistleblowing
- Workers' compensation

ESTATE PLANNING/WILLS/PROBATE

- Guardianship/conservatorship
- Power of Attorney
- Wills and estates

FAMILY/JUVENILE/RELATIONAL

- Abuse and Neglect
- Adoption/Guardianship
- Child and spousal support
- Custody/visitation
- Divorce/separation/annulment
- Domestic violence
- Emancipation
- Juvenile delinquency/Persons In
- Need of Supervision related
- Name change
- Paternity issues

HOUSING

- Eviction
- Foreclosure
- Housing discrimination
- Preservation of affordable housing/Rental Housing Conversion and Sale Act
- Property tax sales
- Public Housing and Section 8/Housing choice voucher assistance/Local rent subsidiary program
- Rent control
- Shelter
- Tenants' rights/landlord disputes

IMMIGRATION/ASYLUM

- Deportation/removal
- Detention
- Status/classification
- Political asylum
- Public benefits eligibility
- Other government benefits

PUBLIC BENEFITS

- Emergency Assistance
- Food stamps and WIC
- General assistance for children
- Medicaid
- Medicare
- Social Security disability and retirement benefits
- Temporary Assistance to Needy Families

OTHER

- Personal injury
- Property Damage
- Tax

APPENDIX C: List of Legal Services Providers and Court Resource Centers/Government Agencies That Returned Completed Surveys

Legal Services Providers

Advocates for Justice and Education, Inc.
ACLU of the National Capital Area
Archdiocesan Legal Network
Asian Pacific American Legal Resource Center
Ayuda
Bread for the City
Break the Cycle
CAIR Coalition
CARACEN
Catholic Charities Immigration Network
Children's Law Center
DC Bar Pro Bono Program
DC Coalition Against Domestic Violence
DC Employment Justice Center
DC Law Students in Court
DC Prisoners Legal Services Project
Lawyers for Children America
The Legal Aid Society of DC
Legal Counsel for the Elderly
Neighborhood Legal Services Program
Our Place, DC
Quality Trust For Individuals with Disabilities
University Legal Services
Washington Legal Clinic for the Homeless
WEAVE (Women Empowered Against Violence)
Whitman Walker Legal Clinic

Court Resource Centers/ Government Agencies

Family Court Self-Help Center
Office of the Attorney General, Domestic Violence Unit

APPENDIX D: District of Columbia Access to Justice Commission Mapping of Needs Project Data Collection Form

PROVIDER / INTAKE SITE:

DATE OF INTAKE:

NOTE TO INTAKE WORKER/VOLUNTEER: This information is being gathered at the request of the District of Columbia Access to Justice Commission, which was created by the DC Court of Appeals to improve civil legal services in the District of Columbia. The Commission will use the data collected here to get a better understanding of district residents' legal needs. Please fill out one form for each person seeking legal assistance, regardless of whether the request comes in person or over the telephone, and regardless of whether your organization can represent the person. The information collected from these forms will be published only on an aggregate basis. A person's response to the questions on this form should not affect whether your organization decides to provide legal services. Thank you for your assistance.

1. How did you find out about this legal services program?

- Friend/Relative
- Prior Use
- Court
- Social Service Agency/Organization
- Other legal services provider
- Internet
- Other

2. What is the nature of the legal issue for which assistance is sought? [check all that apply]

Consumer

- Banking
- Bankruptcy/debt collection
- Car purchases and repairs
- DMV related problems
- Home repair disputes
- Identity theft
- Insurance
- Predatory lending
- Small claims re: goods and services
- Student loans
- Utility terminations

Disability/Health

- Americans with Disabilities Act (ADA) issues in non-employment context
- Mental illness/commitment hearings
- Rehabilitation Act issues in non-employment context

Education

- Disciplinary proceedings
- School reform
- School transfers/access to education
- Special education

Employment

- ADA or Rehabilitation Act disputes in employment setting
- Criminal records as a barrier to employment
- Disability retirement
- Employment discrimination
- ERISA/COBRA/HIPPA
- Family and Medical Leave Act
- Occupational safety and health
- Sexual harassment
- Termination
- Unemployment compensation
- Wage and hour claims
- Whistleblowing
- Workers' compensation

Estate Planning/Wills/Probate

- Guardianship/conservatorship
- Power of Attorney
- Wills and estates

Family/Juvenile/Relational

- Abuse and Neglect
- Adoption/Guardianship
- Child/spousal support
- Custody/visitation

- Divorce/separation/annulment
- Domestic violence
- Emancipation
- Juvenile delinquency/Persons In Need of Supervision related
- Name change
- Paternity issues

Housing

- Eviction
- Foreclosure
- Housing discrimination
- Preservation of affordable housing/Rental Housing Conversion and Sale Act
- Property tax sales
- Public Housing and Section 8/Housing choice voucher assistance/Local rent subsidiary program
- Rent control
- Shelter
- Tenants' rights/landlord disputes

Immigration/Asylum

- Deportation/removal
- Detention
- Status/classification
- Political asylum
- Public benefits eligibility
- Other government benefits

Public Benefits

- Emergency assistance
- Food stamps and WIC
- General assistance for children
- Medicaid
- Medicare
- Social Security disability and retirement benefits
- Temporary Assistance to Needy Families

Other

- Personal injury
- Property Damage
- Tax
- _____

3. Is a case/proceeding currently pending?

- Yes
- No

4. Have you sought legal advice for this legal issue(s) since October 16, 2006?

- No
- Yes. Where: _____

**5. Zip Code _____
Ward _____**

6. Result / Outcome [check all that apply]

- Brief advice/pro se assistance because nothing more is needed
- Brief advice/pro se assistance because that is all provider has capacity to provide
- Representation will be provided through resolution of the issue(s)
- Representation pending further review
- Unable to represent because organization does not provide services in relevant area of law
- Unable to represent because of lack of capacity
- Unable to represent because respondent ineligible for assistance
- Refer to _____
(other legal services provider)
- Refer to private attorney (for fee service)
- Referral to pro bono lawyer
- Referral to social service agency
- Unable to refer because
- Other _____

Please continue to record answers to the following questions only if some form of assistance—including brief advice or referrals—is/are likely to be provided.

7. Transportation

- (a) How did you travel to this location?
- Car/drive
 - Walk
 - Public transport; type _____
 - Other _____
- (b) What is your primary means of transportation?
- Car/drive
 - Walk
 - Public transport; type _____
 - Other _____

8. Year Born: _____

9. Gender:

- Male
- Female

10. Total Number of Dependents: _____

(If Different) Number of Dependents Under the Age of 18: _____

11. Race/Ethnicity [check all that apply]:

- American Indian or Alaskan Native
- Asian
- Black or African American
- Hispanic, Spanish or Latino
- Native Hawaiian or Other Pacific Islander
- White
- Other

12. Annual household Income:

- Under \$10,000
- \$10,001-25,000
- \$25,001-40,000
- \$40,001-55,000
- Over \$55,001

APPENDIX E: List of Legal Services Providers, Court Resource Centers/Government Agencies and Law School Clinics That Returned Completed Data Collection Forms

Legal Services Providers

Archdiocesan Legal Network
ACLU of the National Capital Area
Asian Pacific American Legal Resource Center
Ayuda
Bread for the City
Break the Cycle
CAIR Coalition
Catholic Charities Immigration Network
Children's Law Center
DC Bar Pro Bono Program
DC Employment Justice Center
DC Law Students in Court
Lawyers for Children America
The Legal Aid Society of DC
Quality Trust for Individuals with Disabilities
University Legal Services
Washington Lawyer's Committee for Civil Rights (Disability Section)
Washington Lawyer's Committee for Civil Rights (Prisoner's Rights Section)
WEAVE (Women Empowered Against Violence)
Whitman-Walker Clinic

Court Resource Centers/Government Agencies

Family Court Self-Help Center

Law School Clinics

Georgetown University Law Center
George Washington University School of Law
University of the District of Columbia David A. Clarke School of Law

APPENDIX F: Community-Based Organizations and Government Agencies Interviewed by the Commission

African Resource Center
Beacon House
Building Bridges Across the River
Capital Area Food Bank
Carlos Rosario International Career Center &
 Carlos Rosario International Public Charter School
CentroNia
Chartered Health Plan, Inc.
Children's Health Project of Washington DC
 [Home institution: Children's National Medical Center, Washington DC]
Community Council for the Homeless at Friendship Place
Covenant House Washington
DC Mayor's Office on Asian & Pacific Islander Affairs
Dwelling Place Shelter for Abused Elderly
801-East Housing Assistance Center
East of the River Community Development Corporation
EFFORTS
IONA Senior Services
Jubilee Jobs
La Clinica del Pueblo
Latin American Youth Center
Lutheran Social Services
Marshall Heights Community Development Organization, Inc.
Mary's Center
Mi Casa, Inc.
The Nonprofit Roundtable of Greater Washington
Northwest Settlement House
ONE DC
Ramona's Way
Sasha Bruce House
 [Home organization: Sasha Bruce Youthwork]

APPENDIX G: Case Types for Which District Residents Sought Legal Assistance (based on information collected from providers through Data Collection Form)

Consumer

Insurance
Bankruptcy/Debt Collection
Small Claims Regarding Goods and Services
Car Purchases and Repairs
Home Repair Disputes
Banking
DMV Related Problems
Identity Theft
Student Loans
Utility Terminations
Predatory Lending

Education

Special Education
School Transfers/Access to Education
Disciplinary Proceedings
School Reform

Employment

Termination
Employment Discrimination
Wage and Hour Claims
Workers' Compensation
Sexual Harassment
Unemployment Compensation
ADA or Rehabilitation Act Disputes in an Employment Setting
Criminal Record as a Barrier to Employment
Family and Medical Leave Act
Disability Retirement
Whistleblowing
Occupational Safety and Health
Retaliation
ERISA/COBRA/HIPPA
Privacy

Estate Planning

Wills and Estates
Guardianship/Conservatorship
Power of Attorney
Life Insurance Benefits

Family

Custody/Visitation
Divorce/Separation/Annulment
Child/Spousal Support
Domestic Violence
Abuse and Neglect
Adoption/Guardianship
Paternity Issues
Name Change
Emancipation
Juvenile Delinquency/In Need of Supervision Related

Health/Disability

ADA Issues in non-Employment Context
Mental Illness/Commitment Hearings
MRDDA Related Issues

Public Benefits

Medicare
Medicaid
Social Security Disability and Retirement Benefits
Food Stamps and Women Infants and Children (WIC)
Emergency Assistance
Temporary Assistance to Needy Families
General Assistance for Children
Grandparent Subsidy

Housing

Landlord/Tenant Disputes and Eviction
Public Housing and Section 8/Choice Voucher/Subsidized
Housing
Rent Control
Preservation of Affordable Housing/RHC&S Act
Shelter
Foreclosure
Housing Discrimination

Immigration/Asylum

Status/Classification
Deportation/Removal
Other Government Benefits
Political Asylum
Public Benefits Eligibility

Other

Prisoners' Rights Issues (other than Jail Conditions)
Criminal
Personal Injury
Police Misconduct/Disputes
Tax
Civil Rights
Jail Conditions
Property Damage
Harassment

APPENDIX H: Pro Se Statistics



District of Columbia Court of Appeals
Washington, DC 20001

Pro Se Participations* in the DCCA

	2003 #	2003 %	2004 #	2004 %	2005 #	2005 %
AA	38/114	33%	72/125	58%	122/219	56%
CV	252/501	50%	156/375	42%	121/335	36%
FM	34/54	63%	22/53	42%	30/54	56%
PR	20/29	69%	22/33	67%	12/30	40%
DA	39/52	75%	22/24	92%	18/21	86%
OA	71/77	92%	64/70	91%	48/57	84%

* this includes cases with any pro se party, appellant or appellee.

AA = agency matters from final orders in contested cases
 CV = Civil Division (Civil Actions, Landlord Tenant, occasional MPA)
 FM = unsealed Family Court Matters
 PR = Probate Division

DA = Discretionary Applications (small claims and minor criminal matters)
 OA = Original Applications (petitions for writ of mandamus or writ of prohibition)

= number of cases with pro se participations in that category of case/total filings in category

% = pro se participations as a percentage of cases in that category

(e.g., in 2003, 38 of the 114 agency matters filed had a pro se party; the pro se cases with a pro party were 33% of the total agency filings in that year)

Observations: Pro se participations in agency matters are overwhelmingly unemployment matters. Pro se participations in civil matters have fluctuated over time; percentages (and even total filings) have been affected at times by multiple appeals filed by the same individuals (e.g., one individual filed 21 of the 252 pro se CV appeals in 2003). The FM total includes CPO appeals where the complainant is pro se. The PR total includes cases where there are pro se appellees carried on the docket because they were parties to the case below but who never participate in the appeal. The court's discretionary (DA) and original (OA) jurisdiction matters are overwhelmingly filed pro se; most of the OA cases are mandamus petitions filed by inmates seeking to compel action by the trial court on pending post-conviction motions.



District of Columbia Court of Appeals
Washington, DC 20001

Origins of Pro Se Appeals from Civil Division

	2003	2004	2005
CIVIL ACTIONS	178	126	93
LANDLORD-TENANT	63	23	24
MERIT PERSONNEL ACT	5	7	2
SMALL CLAIMS*	2	-	1
OTHER**	4	-	1
TOTAL	252	156	121

* When an applicant's petition for review from an adverse Small Claims decision is granted, the case is accepted as an appeal and given a CV case number.

** These cases are all appeals from the denial by Judge-in-Chambers of a motion to proceed in forma pauperis (i.e., to enable the individual to file a complaint).



Superior Court of the District of Columbia
Washington, DC 20001

Pro Se Plaintiffs Report

This report includes only Pro Se Plaintiffs, not Pro Se Defendants. Pro Se Plaintiffs include: Plaintiff, Petitioner, Petitioner on Behalf of Third-Party Plaintiff, Applicant, Personal Representative, Adoptor One, Adoptor Two (Adoptive Parents, one case per family unit is counted). This report contains only data for Primary Parties on a case. A separate statistical report is being prepared for Pro Se Defendants, *i.e.*, Defendants, Respondents, Minor Child etc.

DCSC DIVISIONS AND BRANCHES	NUMBER OF PLAINTIFFS IN 2005	NUMBER OF "PRO SE" PLAINTIFFS IN 2005	% OF "PRO SE" PLAINTIFFS IN 2005	% OF PLAINTIFFS REPRESENTED BY COUNSEL
CIVIL DIVISION:				
CIVIL ACTIONS	10,089	2,189	21.70%	78.30%
LANDLORD & TENANT ¹	45,669	3,009	6.59%	93.41%
SMALL CLAIMS	14,627	2,440	16.68%	83.32%
DOMESTIC VIOLENCE UNIT:				
INTRAFAMILY	3,747	3,665	97.81%	2.19%
FAMILY COURT OPERATIONS:²				
ADOPTION	324	123	37.96%	62.04%
DIVORCE/CUSTODY/MISCELLANEOUS ³	3,658	2,825	77.23%	22.77%
MENTAL HEALTH	1,157	7	0.61%	99.37%
PATERNITY & CHILD SUPPORT ⁴	3,177	15	0.47%	99.53%
PROBATE DIVISION:				
FORMAL PROBATE	1,570	683	43.50%	56.50%
GUARDIANSHIPS	30	13	43.33%	56.67%
INTERVENTIONS	331	185	55.89%	44.11%
MISCELLANEOUS	2	0	0.00%	0.00%
SMALL ESTATES	710	697	98.17%	1.83%
TRUSTS	51	31	60.78%	39.22%

¹ Pro Se Plaintiffs in the Landlord & Tenant Branch consist only of persons, such as property owners or alleged property owners and landlords, seeking to evict a tenant, subtenant or occupant. Tenants who initiate civil actions in the Superior Court against property owners or landlords must do so in the Civil Actions Branch or the Small Claims Branch rather than the Landlord and Tenant Branch.

² There are no Pro Se Plaintiffs in Juvenile Cases. The law requires that these cases must have Attorney Representation.

³ Divorce/Custody/Miscellaneous cases include the following complaints, petitions & orders for new filings: Divorce, Custody, Annulments, Legal Separation, Stand-by Guardianship, Alimony, Child Support, Equitable Distribution of Property, Enforce of Property, Settlement Agreement, Registration of Foreign Judgment, Visitation, Petition for Writ of Ne Exeat, Writ Habeas Corpus.

⁴ Numbers for Domestic Violence - Paternity & Child Support are included with Family - Paternity & Child Support.



Superior Court of the District of Columbia
Washington, DC 20001

2005 Pro Se Responders Report¹

DCSC DIVISIONS AND BRANCHES	NUMBER OF RESPONDERS IN 2005 ²	NUMBER OF DISMISSALS BEFORE HEARING/TRIAL	NUMBER OF DEFAULTS ENTERED	NUMBER OF "PRO SE" RESPONDERS IN 2005	% OF "PRO SE" RESPONDERS IN 2005
CIVIL DIVISION:					
CIVIL ACTIONS - EXCEPT TAX LIENS (2006 DATA)	12,359	2,582		6,482	52.45%
CIVIL ACTIONS - TAX LIENS (2006 DATA)	4,272	495		2,646	61.94%
LANDLORD & TENANT (SEE ATTACHED REPORT)					
SMALL CLAIMS (SEE THE AMENDMENT TO 2005 SMALL CLAIMS RESPONDERS REPORT)					
DOMESTIC VIOLENCE UNIT:					
INTRAFAMILY	3,821	0	0	3,726	97.51%
FAMILY COURT OPERATIONS:³					
DIVORCE/CUSTODY/MISCELLANEOUS ⁴	6,268	0	610	2,370	37.81%
MENTAL HEALTH	1,209	0	0	36	2.98%
PATERNITY & CHILD SUPPORT ⁵	3,183	0	0	3,140	98.65%
DCSC DIVISIONS AND BRANCHES	NUMBER OF RESPONDERS IN 2005	NUMBER OF CASES CONTESTED			
PROBATE DIVISION:					
FORMAL PROBATE	199	47			

¹ This report contains only "Pro Se" data for Responders on a Case. A separate report has been prepared for "Pro Se" Filers.

² Responders consist of the following Party Types: Defendant, Respondent, Minor Child, Guardian, Subjects, Conservator, Decedent, Third Party Defendant, Co-Defendant, Co-Respondent, Co-Respondent Charged, Co-Respondent Not Charged, Co-Respondent-Other. This number includes every Defendant/Responder listed in the lawsuit regardless of whether that Defendant/Responder entered an appearance. In 2005, there were 45,669 new cases filed in the Landlord and Tenant Branch but, because some of those cases involved multiple Defendants/Responders, there were 49,854 Defendant/Responders in 2005. Not all the cases filed in 2005 were disposed in 2005.

³ There are no Pro Se Responders in Juvenile Cases. The law requires that these cases must have Attorney Representation.

⁴ Divorce/Custody/Miscellaneous cases include the following complaints, petitions & orders for new filings: Divorce, Custody, Annulments, Legal Separation, Stand-by Guardianship, Alimony, Child Support, Equitable Distribution of Property, Enforce of Property, Settlement Agreement, Registration of Foreign Judgment, Visitation, Petition for Writ of Ne Exeat, Writ Habeas Corpus.

⁵ Numbers for Domestic Violence—Paternity & Child Support are included with Family—Paternity & Child Support.



Superior Court of the District of Columbia
Washington, DC 20001

Civil Division: Landlord and Tenant Responders Report 2005

(Supplement to 2005 Pro Se Responders Report)

	NUMBER	PERCENTAGE
TOTAL RESPONDERS¹	49,854	100.00%
DISMISSED BY BULK FILING PRIOR TO INITIAL COURT PROCEEDING ²	19,867 ³	39.85% ⁴
TOTAL NUMBER OF RESPONDERS REQUIRED TO APPEAR AT INITIAL COURT PROCEEDING	29,987	60.15% ⁵
BREAKDOWN OF RESPONDERS REQUIRED TO APPEAR AT INITIAL COURT PROCEEDING	29,987	100.00%
NOT REPRESENTED BY COUNSEL	29,313	97.75% ⁶
REPRESENTED BY COUNSEL	674	2.25% ⁷

¹ Includes all 2005 Landlord and Tenant Responders (i.e., the number of people who were sued in Landlord/Tenant Court in 2005).

² This category is for bulk dismissals only, i.e., those cases that were dismissed by fax or email etc. prior to the initial court proceeding. These cases were not called at roll call. No Responder was ever required to appear in court.

³ Some cases had multiple responders. This number represents the total number of responders who were dismissed by fax or email etc prior to the initial court proceeding. These cases were not called at roll call. No Responder was ever required to appear in court.

⁴ In other words, 39.85% of the defendants sued in Landlord/Tenant Court had their cases dismissed prior to the initial court proceeding.

⁵ In other words, 60.15% of the defendants sued in Landlord/Tenant Court were required to appear at the initial hearing.

⁶ This figure represents the percentage of litigants who had to appear in court who were pro se. Of the 60.15% of responders required to appear at the initial court proceeding 97.75% were not represented by counsel.

⁷ This figure represents the percentage of litigants who had to appear in court who had a lawyer. Of the 60.15% of responders required to appear at the initial court proceeding 2.25% were represented by counsel.



Superior Court of the District of Columbia
Washington, DC 20001

Civil Division: Small Claims Responders Report 2005

(Amendment to 2005 Pro Se Responders Report)

	NUMBER	PERCENTAGE
TOTAL RESPONDERS¹	15,689²	100.00%
REPRESENTED BY COUNSEL	452 ³	2.90%

¹ Includes all 2005 Small Claims Responders (i.e., the number of people who were sued in Small Claims Court in 2005).

² Of the 15,689 responders, 1,655 responders (who were parties in 1,475 cases) had their claim and/or case dismissed and 4,981 responders had defaults entered against them.

³ Of the 15,689 responders sued, 452 had attorneys enter an appearance on their behalf.

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