



## Washington State Office of Civil Legal Aid

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# CIVIL JUSTICE REINVESTMENT PLAN

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### 1. Context

The 2015 Civil Legal Needs Study Update (CLNS Update) documents that seventy-one percent (71%) of low-income households in Washington State experience one or more civil legal problems each year and that, of these, at least seventy-six percent (76%) do not get any legal help they need to solve these problems.

Sixty-five percent (65%) of those who experience at least one civil legal problem each year do not seek legal help. According to comments offered by respondents to the CLNS Update survey instrument, many – if not most – do not know that the problem they experienced was legal in nature. This lack of understanding is consistent with national studies<sup>1</sup> which confirm that low-income people have significant difficulties making the link between the problems they experience and the need for legal help.

In addition, many who experienced one or more civil legal problems either did not know where to go for legal help or felt that they could not afford to the legal help that they needed. Finally, of those who did seek legal help, fully one-third got no help whatsoever. Others got some level of help. Of those who got any help, 17% report that they were able to fully resolve their legal problem and another 44% got some help in resolving their problem. While the study did not inquire into the level of service respondents received, it is reasonable to assume (in light of current legal aid delivery system capacity) that many of those who either had limited resolution or no resolution to their problems were unable to receive the level of direct legal assistance that they needed to solve their problems.

### 2. Legal Aid Staffing and Minimum Access

Since 1975, the standard for “minimum access”<sup>2</sup> to civil legal aid services has been 1 FTE attorney for every 5,000 people living at or below 125% of the federal poverty level. When the

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<sup>1</sup> See the most recent discussion in the US Department of Justice National Institute of Justice, Office for Access to Justice, the National Science Foundation and White House Interagency Legal Aid Roundtable, *Civil Legal Aid Research Workshop Report* (February 2016), published at <https://www.ncjrs.gov/pdffiles1/nij/249776.pdf>, at 7 (characterizing the presentation of Dr. Rebecca Sandefur).

<sup>2</sup> The 2:10,000 figure was established by the Board of Directors of the federal Legal Services Corporation (LSC) in 1975 to serve as the floor for federal investment in the newly created LSC. This figure was used to guide congressional appropriations from 1975-1980 (from \$75 million to \$300 million) by which time minimum

standard was adopted, there was no organized system to develop, deliver and track the contributions of volunteer attorneys involved in civil legal aid delivery. Thus, the formula assumed that there needed to be 1 professional staffed legal aid attorney for every 5,000 eligible low income residents (or, as it was then-characterized, 2:10,000).

In Washington State we have developed a robust and effective system of volunteer attorney recruitment and engagement. Through 17 local, bar sponsored (and often bar operated) community-based programs, thousands of volunteer legal aid attorneys deliver more than 46,000 hours of free legal help to low-income residents eligible for state-funded civil legal aid services.<sup>3</sup> At 2,000 hours per FTE attorney per year, this contribution delivers the rough equivalent of 23 FTE civil legal aid attorneys.<sup>4</sup>

The balance of the state-funded civil legal aid delivery system consists of professional staff legal aid attorneys employed by the statewide Northwest Justice Project and four specialized providers of civil legal aid services that provide services to specific hard-to-serve client populations or on matters for which unique client service expertise or delivery approaches offer the most effective approach to responsive legal aid delivery.<sup>5</sup> Together the state-funded staffed legal aid programs employ about 107 full time attorneys.

According to the Census Bureau, nearly 1.2 million Washingtonians live at or below 125% of the federal poverty level.<sup>6</sup> Using the 1:5,000 formula, 240 full time attorneys are needed to achieve minimum access levels of client service delivery capacity. The combined current client service capacity of the state-funded legal aid system is 130 FTE attorneys. This results in a ratio of 1 FTE equivalent civil legal aid attorney for every 9,450 people living at or below 125% of the federal poverty guideline. The net shortfall is 110 FTE attorneys.

### **3. Self-Diagnosis, Self-Referral, Self-Help and Other Strategies**

The 2015 CLNS Update documents that low-income people experience the greatest number of legal problems in the areas of health care, consumer/finance and employment. At the same time, it tells us that low-income residents are most likely to self-diagnose their problems as being legal in nature and seek legal help with respect to problems relating to family law, rental housing and consumer/finance (mostly debt collection and bankruptcy). This finding is not surprising, as matters arising in these areas are often (a) understood as presenting problems for which solutions are urgently required and (b) matters where the judicial system is the exclusive or most logical forum for the resolution of the problems presented.

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access had been achieved. See, Erlich, *Giving Low-Income Americans Minimum Access to Legal Services*, 64 A.B.A.J. 696 (1978).

<sup>3</sup> Eligibility for state-funded civil legal aid services is governed by [RCW 2.53.030](#).

<sup>4</sup> Substantial additional volunteer contributions are made through dedicated pro bono programs operated at large (principally Seattle-based) law firms and through large in-house corporate counsel offices.

<sup>5</sup> These are TeamChild, the Seattle Community Law Center, the Unemployment Law Project and the Family Advocacy Program at Solid Ground.

<sup>6</sup> 2014 5-Year American Community Survey

Given the widespread inability of low-income to self-diagnose and effectively access legal aid services for problems with a legal dimension, intentional effort needs to be made to expand outreach, legal education, informational tools and technology applications, and related resources to help them do so. Further, dedicated capacity needs to be developed to identify and reach members of low-income communities that experience cultural, linguistic, ability and other barriers that compound the general limited ability of people understand the legal dimensions of the problems they are experiencing and self-refer for legal help.

The civil judicial system is complex and premised on an adversarial relationship between contesting parties, both of whom are represented by attorneys. Under the Code of Judicial Conduct, the independent judicial officer is significantly constrained from assisting any party, even those who are not represented by an attorney.

Unfortunately, a growing and increasing majority of family law litigants are not represented by an attorney.<sup>7</sup> This can result in significant imbalances in power between those who have counsel and those who do not. Further, the growing numbers of unrepresented (or self-represented) parties in family law (and other) cases causes significant drag on the machinery of justice, with self-represented litigants often misfiling documents, failing to complete forms properly and otherwise running afoul of court processes and procedures.

Led nationally by the Self-Represented Litigants Network, the Legal Services Corporation, the National Center for State Courts and others, there is a growing effort to develop and place more technology based tools in the hands of self-represented litigants trying to navigate the civil justice system. A central focus of these efforts has been the development of technology systems designed to enable self-represented litigants to complete (and in some locations electronically file) court forms through automated document assembly systems. These “TurboTax-like” systems offer an iterative and sequential series of questions, the answers to which allow the back end of the system to populate required forms with appropriate data and prepare them for review, printing and filing.

The Washington State Supreme Court recently approved 211 [family law forms](#) that have been translated from legalese into plain language. The product of nearly six years of work, these forms are now required to be used in all cases. The Access to Justice Board, Northwest Justice Project and Administrative Office of the Courts collaborated on translating and securing Supreme Court approval of these forms.

The development and publication of the plain language forms offers a singular opportunity to empower self-represented litigants to be more effective and more successful in participating in civil family law proceedings. Given the national public and private sector interest in expanding legal literacy and access to self-help resources, significant opportunities exist to attract matching funds to state-level investment in the automation of the new family law forms. Through an anticipated inter-agency Memorandum of Understanding between the Office of Civil Legal Aid (OCLA), the Administrative Office of the Courts (AOC), the Access to Justice Board and

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<sup>7</sup> Recent information from the Administrative Office of the Courts suggests that at least one party is unrepresented in nearly 80% of all family law cases, and that both parties are unrepresented in upwards of 60% of such cases.

possibly the Northwest Justice Project, OCLA will assume lead agency status in managing a multi-agency effort to automate the new family law forms. This effort will be carried out consistent with usability and other requirements established by the Supreme Court in its Access to Justice Technology Principles and other relevant considerations.

#### **4. Statewide Infrastructure and Support**

Any system as complex as the statewide legal aid delivery system must have sufficient infrastructure, training and support to ensure that services are effectively and economically delivered, are responsive to the most prevalent and pressing needs of clients, deliver results and outcomes that are responsive to client needs and legal rights and are sophisticated and agile enough to take advantage of new and emerging technologies and evidence-based best-practices. This will require dedicated staff and resources to support training, research and to effectively monitor outputs and outcomes realized for clients.

#### **5. Components of the 2016 Civil Justice Reinvestment Plan**

##### **A. Helping People Understand Their Legal Problems; Expanding Self-Help Tools; Fostering New Public-Private Partnerships to Develop and Implement Innovative Delivery Strategies**

Efforts here will focus on developing and investing resources to (a) expand the ability of low-income people to understand their rights, prerogatives and responsibilities under the law, (b) enable them to understand the potential legal dimensions of the problems that they are experiencing and make informed decisions about whether and, if so, when and where to seek help from an appropriate legal aid provider, and (c) expand self-help resources that will better enable them to solve their legal problems without or with limited assistance of a legal professional. Focus will not only be on those with technology capability and access to internet-based services, but also on those who lack such capabilities or consistent access to the internet, as well as those who experience language, cultural and other barriers.

In addition to automating the new plain language family law forms, a number of opportunities exist to help low-income people better understand their legal rights, self-diagnose their legal problems and gain access to a civil justice system that is otherwise out of reach. Strategies may include developing new smart-phone applications that will allow individuals to assess their current situations, understand their legal rights, and tell them where and how to get legal information, assistance and, if need be, representation. Other potential ideas may include technology-loaded vehicles that will enable legal aid staff and volunteers to be more present on a regular basis at locations where low-income people go and to reach out and connect with communities who are not connected or who experience social, cultural, language, mental health and other barriers (such as homelessness, geographic isolation or restrictions on their mobility (e.g., trafficking victims)) to learn about their legal rights and get help with problems before they become acute.

There is a wealth of private sector technology programming and development capacity in Washington State. Like its federal counterpart, the Legal Services Corporation, OCLA proposes to seek a sum of funding each biennium to competitively stimulate new public-private partnerships in delivery approaches and development of innovative technology applications that will enhance the ability of low-income people to identify and solve their legal problems by themselves.

**Investment Required:** \$250,000 per year for automation of self-help forms (Phase 1); \$100,000 per year Phase II and beyond)<sup>8</sup>; \$150,000 per year for Technology Innovation Partnership investment (Phase I) designed to stimulate public-private partnerships that generate delivery system innovations (including technology based applications) focused on expanding the ability of people to understand their rights, self-diagnose the legal nature of the problems they are experiencing and self-refer into the civil legal aid system. (Phase II funding moves to \$400,000 per year).

Total Biennial Increase Over Current Levels: \$1.0 million (Phase I -- \$800,000).

## **B. Expanding Volunteer Lawyer Involvement and Service Delivery**

The market value of current services delivered by volunteer attorneys working in association with the 17 community based volunteer attorney programs is nearly \$11.5 million per year.<sup>9</sup> The value of organized pro bono services is equal to about 85% of the current annual appropriation for civil legal aid.

While the level of service is laudable, there is substantial untapped opportunity for greater volunteer involvement in legal aid delivery. The key to effectively tapping the potential level of volunteer services is to have high quality, professional staff involved in the recruitment, training, mentoring, support and referral of clients to these volunteer attorneys. Strategically expanding and upgrading staff support within the community-based volunteer attorney programs will expand the number of attorneys and attorney hours dedicated to addressing the civil legal problems of low-income people in Washington State. The Access to Justice Board's Pro Bono Council advises that with sufficient additional investment in volunteer program staff, an additional 12,000 to 16,000 hours of volunteer attorney services can be secured on an annual basis – increasing the leveraged volunteer attorney contribution by between 25% and 30% (or the equivalent of 6-8 FTE) over current levels.

Total Biennial Increase Over Current Levels: \$2.0 million (Phase I -- \$1.125M).

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<sup>8</sup> Phase I covers the FY 2017-19 biennium. Phase II covers FY 2019-21 and beyond.

<sup>9</sup> This assumes a market value of \$250/hr.

### **C. Achieving Minimum Access Through Expanded Professional Civil Legal Aid Staffing**

The core of the civil legal aid system is and will always be the professional staffed legal aid programs. Northwest Justice Project (NJP) is the principal state-funded legal aid program. NJP hosts the statewide legal aid call center (CLEAR), staffs and supports the statewide legal aid self-help resources website ([Washington Law Help](#)), provides statewide coordination and support for professional civil legal aid attorneys across the state and maintains client service offices in 17 locations around the state. In addition, there are four state-funded specialized civil legal aid providers that serve specific client populations and carry substantive expertise in specific areas of law. These include TeamChild (serving youth simultaneously involved in multiple legal forums), Seattle Community Law Center (serving homeless disabled residents of King and Snohomish Counties on matters relating to SSI and SSDI), Solid Ground Benefits Legal Services (serving families with legal problems involving state governmental assistance) and the Unemployment Law Project (serving clients contesting denials or terminations from claims for unemployment insurance benefits).

After incorporating the effective FTE contributions of current and potential volunteer attorney efforts, the 2016-17 addition of 20 FTE attorneys underwritten with federal Victim of Crime Act (VOCA) funds and current levels of basic field client service staffing in these programs, there remains a gap of **88 FTE attorneys** from the required level needed to achieve minimum access (using the 1FTE:5,000 eligible person standard).

At an average fully loaded cost of \$125,000/FTE attorney/year,<sup>10</sup> the total increase required to achieve minimum access legal aid staffing is \$11,000,000 per year.

Total Biennial Increase Over Current Levels: \$22,000,000 (Phase I -- \$9,687,500)

### **D. Statewide Infrastructure, Support and Accountability**

Effective operation of the statewide civil legal aid system requires intentional efforts to ensure coordination and support for staff and volunteers involved in civil legal aid delivery at the local, regional and statewide levels. As is the case in the indigent defense arena, resources must be expressly dedicated to ensure that professional staff and volunteer attorneys are trained in the substance of the legal problems experienced by low-income people and the skills necessary to effectively address them. Additionally, there must be appropriate staff dedicated to ensure coordination of client service delivery and the quality and accountability of services delivered. Finally, systems must be established to monitor the substance and impact of the additional services funded through this Reinvestment Plan to ensure accountability to taxpayers, other investors and clients. Direct incremental outlays for training, support, research and outcomes monitoring will be \$300,000 per year. An additional \$200,000 will be needed for expanded staff at the Office of Civil Legal Aid to manage the civil legal aid program.

Total Biennial Increase Over Existing Levels: \$1,000,000 (Phase I -- \$400,000)

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<sup>10</sup> This is the average fully loaded cost (salary, benefits, administration, and overhead) of a 5-7 year attorney at the Northwest Justice Project.

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**Total Biennial Increase Above Current Levels:**

Total incremental funding to achieve minimum access, maximize volunteer attorney involvement, expand the ability of low-income people to self-diagnose their legal problems and expand self-help tools, and ensure effective support for the statewide civil legal aid system:

**\$26,000,000 (Phase I -- \$12,012,000)**