

Quantifying the Additional Revenue Needed to Address the Unmet Civil Legal Needs of Poor and Vulnerable People in Washington State.

Task Force on Civil Equal Justice Funding (May 2004)

Executive Analysis

This report quantifies the level of additional resources required to address the unmet civil legal needs of low-income people in Washington State. The analysis starts with the objectively identified level of unmet need as documented in the Task Force's recently published Study on the Civil Legal Needs of Low Income People in Washington State. These needs are broken down into two general categories – (1) needs that can be addressed with relatively low levels of legal assistance, and (2) needs that require extensive levels of legal assistance in order to achieve an effective resolution. The analysis moves to an assessment of the civil equal justice system's current capacity to address needs in each of these categories and the resources currently available to support this capacity (\$19,000,000), calculates the gaps in delivery capacity that must be addressed and quantifies the additional resources needed to close these capacity gaps (\$28,256,000). Finally, the analysis identifies the percentage of the resource gap attributable to civil legal needs that fall within the categories of state eligible legal services activity (65%) and those that are not (35%), and concludes that an additional \$18,250,000 per year (on top of current funding levels) is required to meet the need for civil legal assistance in state authorized areas of focus.

Six primary factors are considered in the Task Force's quantification analysis. These include:

- The overall number and different types of civil legal needs experienced by low-income people, as identified by the Civil Legal Needs Study.
- The combined current capacity of the civil equal justice delivery system to provide legal information, advice, assistance and representation to low-income Washingtonians.
- The percentage of legal needs addressed by the current delivery system.
- The combined current amount of funding dedicated to civil equal justice services throughout the state.
- Cost differentials for providing different types of civil equal justice services.
- The potential to expand delivery capacities for each type of civil equal justice service and the associated costs doing so.

A. The Delivery Framework

As devised and overseen by the Supreme Court's Access to Justice Board, Washington State's civil equal justice delivery system is composed of four primary components:

- A statewide comprehensive telephone based intake, education, advice and referral system known as CLEAR (Coordinated Legal Education, Advice and Referral).
- Two statewide staffed legal aid programs – Northwest Justice Project and Columbia Legal Services
- Twenty-four locally based volunteer attorney programs
- A number of specialized providers that provide civil legal services to discrete populations of low income people or services of specialized substantive nature or geographic focus.

These four components are currently supported at a level of \$19,000,000 per year, all sources of funding (federal, state, IOLTA, local and quasi-governmental, private, etc.) combined.

Working together, these components form the core of a nationally acclaimed, highly integrated, effective and economical system for addressing the civil legal needs of low income Washingtonians. Their efforts are complemented and supported by an expanding array of partners including but not limited to a statewide web-based self-help resources system, locally based family law courthouse facilitators, a growing number of courthouse based family law justice centers, three law school clinical programs, county clerks and law librarians, locally based domestic violence victim advocacy programs, and many other law and legal related programs.

B. Key Factual Understandings and Projections

1. **Households in Need of Legal Assistance:** 140,000 low-income households will experience a legal problem each year that they understand has a legal dimension and requires some level of legal assistance.
2. **Households That Do Not Receive Legal Assistance.** Legal assistance is unavailable for 85% of these households (about 119,000 per year). All told, legal assistance is unavailable for more than 390,000 individual

legal problems experienced by low-income people in Washington State each year.

3. **Households Requiring Low Levels of Legal Assistance:** About 75% of households that experience a legal need can achieve an effective resolution with low levels of assistance such as legal education, self-help assistance, advice and counsel, and brief or limited services provided by a wide array of legal aid and related justice and human services providers.
4. **Households Requiring More Extensive Legal Assistance:** About 25% of households seeking legal assistance require some level of extended assistance to secure an effective resolution. This may include unbundled or discrete task assistance or extended representation through to completion of a legal proceeding.
5. **Average CLEAR Case Handling Capacity Per Attorney:** CLEAR advocates are able to handle approximately 580 cases per person per year to conclusion. They also refer on average about 320 cases for additional legal assistance per person per year. With 18 full time advocates, CLEAR has the current capacity to handle nearly 11,000 cases and refer an additional 5,700 cases per year.
6. **Fifty Percent of CLEAR Callers Require Extended Legal Assistance:** About 50% of callers to CLEAR require some level of extended legal assistance in order to achieve an effective resolution of their legal problems.
7. **Effect of Shortfall in Capacity to Accept Referrals of Cases Requiring Extended Legal Assistance:** Due to the overwhelming lack of capacity throughout the state to provide extended representation, CLEAR attorneys are forced to retain many cases (nearly 3,000 of the 17,000 cases handled by CLEAR per year) requiring this level of legal assistance.
8. **Case Handling Capacity of Full Time Legal Aid Attorneys:** Eighty-seven (87) full time attorneys (FTA's) employed by non-profit legal aid providers are available to provide extended legal representation in Washington State. Full time legal aid attorneys at the two statewide legal aid programs handle on average about 85 cases per person per year.
9. **Current and Potential Contribution of Volunteer Attorneys:** Volunteer attorneys currently contribute about 75,000 hours of free legal assistance to low-income people on civil legal matters each year. Two-thirds of these hours are contributed through twenty-four local volunteer attorney programs, the activities of which are supported at an annual cost of about \$2.08 million each year. The number of hours of volunteer attorney services leveraged through organized volunteer attorney

- programs can be increased by about 50% over the course of the next five-seven years. Most of this potential for increased involvement will be realized in urban areas where the vast majority of attorneys reside and practice.
10. **Value of Volunteer Attorney Services:** At an average of \$150 per hour, the value of volunteer attorney services provided to meet the needs of low income people in Washington State is about \$11.25 million.
 11. **Benchmark for Comparing Full Time and Volunteer Attorney Contributions:** 1500 hours of volunteer attorney services generates the effective equivalent level of service of a full time legal aid attorney (FTA).
 12. **Current Civil Equal Justice Delivery System Funding – All Sources:** Total annual funding for the programs that make up the core of the civil equal justice delivery system in Washington State is about \$19 million. Combined with the in-kind value of contributions from volunteer attorneys, the total value is \$30.25 million, of which the state currently provides only \$6.4 million.
 13. **Projections for Federal Funding:** Federal funding for legal services has been flat since 1996 (in real dollars), and is not expected to increase substantially over the next five-seven years.
 14. **Projections for IOLTA Funding:** IOLTA income is dependent upon market interest rates paid by commercial banks. Due to historically low interest rates, IOLTA income has dropped from a high of \$6.2 million in 2001 to current estimated levels of about \$4.0 million for calendar year 2004. IOLTA income is expected to hover between \$4.5 million and \$6 million over the next three to five years.
 15. **Projections for Private Contributions:** The ATJ Network is moving to a unified statewide private resource development effort for civil legal aid. This should significantly result in increased private contributions for civil legal aid. A \$1 million per year increase over the combined current level of giving (about \$1.1 million per year) should be realized by 2007.

C. Additional Resources Needed to Address the Unmet Needs Identified in the Civil Legal Needs Study

1. **Expanding the Capacity to Provide Information, Advice and Brief Services Through CLEAR – \$3.52 Million Per Year**

Northwest Justice Project's CLEAR (Coordinated Legal Education, Advice and Referral) is a nationally recognized system that serves as a client gateway into the legal aid delivery system, as well as a core provider of legal advice and brief

services and an efficient vehicle for referring clients who need extended services to organizations capable of providing such service. CLEAR is operating well below demonstrated need levels. CLEAR is not available in King County. In order for CLEAR to provide meaningful access to services in all 39 counties given current levels of client demand, a substantial increase is required in both the number of available telephone lines and staff advocates. An additional 32 full time advocates are required to achieve this objective at an incremental cost of \$3.52 million per year.

2. Expanding the Network's Ability to Meet the Needs of Those Who Require Extended Legal Assistance.

Statewide and specialty legal services and volunteer attorney programs are the principal organizations serving the civil legal needs of low-income people requiring extended legal assistance. The Civil Legal Needs Study indicates that 140,000 households will experience a civil legal need each year. Twenty-five percent (25%) of these (29,750) will require extended legal assistance with respect to one or more legal problems.

Taking into consideration the present and potential contributions available from volunteer attorneys and the 87 full time staff attorneys currently available to provide extended legal assistance, there is a shortage of 188 FTA's needed to meet the needs of low-income people identified in the Civil Legal Needs Study. Of these, about 122 FTA's are needed to address legal needs falling within currently authorized areas of state legal assistance.

a. Expanding Volunteer Attorney Contributions – \$2.0 Million Per Year

Volunteer attorneys contribute approximately 50,000 hours of pro bono service through 24 local volunteer attorney programs each year. An estimated additional 25,000 hours of assistance are provided through other volunteer attorney partnerships. At 1500 volunteer hours per full time attorney (FTA), volunteer attorneys provide the equivalent of 50 FTA's worth of assistance each year. The value of volunteer legal assistance provided to low-income people exceeds \$11.25 million per year.

While there are effective limits on the potential amount of pro bono assistance that can be leveraged statewide, pro bono leaders believe that the cumulative number of volunteer hours leveraged by volunteer attorney programs throughout the state can be increased by 50%, increasing the effective number of FTA's leveraged through

volunteer contribution by 25, to a total of 75 FTA's, over the next five to seven years. To achieve this level of expanded pro bono service, an increased investment of \$2,000,000 per year will be required.

b. Filling the Remaining Gap in Capacity to Meet the Needs of Low Income People Requiring Extended Levels of Legal Assistance – \$22.56 Million Per Year.

Current legal services programs (statewide and specialty) employ about 87 FTA's actively engaged in the delivery of extended legal assistance. Taking into consideration the present and potential FTA contribution from volunteer attorney programs (75 FTA's); there remains a shortfall of 188 FTA's. At a fully-loaded cost level of \$120,000 per attorney per year, an additional \$22,560,000 is required to meet the need for extended client representation.

D. Calculating the Total Additional Funding Need and the State's Relative Share.

1. The Total Additional Funding Needed

The total amount of funding needed to effectively address the needs of the 140,000 low-income households that are aware of their need for civil legal assistance requires an increase of \$28,080,000. This breaks down as follows:

- (a) Meeting the needs of low income households that can be effectively served through legal education, advice, self-help and other such services
 - Expand CLEAR – \$3.52 million
- (b) Meeting the Need for Extended Representation
 - Add 25 FTA's by investing in expanded volunteer attorney contributions – \$2.0 million
 - Filling the remaining gap by adding 188 full time attorneys (FTA's) – \$22.56 million

Total: \$28.08 million

2. The State's Share

As 65% of all legal needs experienced fall within substantive categories for which state funding may be used to provide legal aid services, the share of the additional cost attributable to state-authorized legal assistance is \$18,252,000.

Total State Share: \$18.25 million

DISCUSSION

The Task Force on Civil Equal Justice Funding previously issued the results of the Washington State Civil Legal Needs Study. This Study outlines the nature, substance and prevalence of civil legal problems faced by low income residents of Washington State. It also provides information about distinctions between the legal problems experienced by members of different social and cultural demographic groups as well as barriers that limit access to the justice system. The Study's findings are at <http://www.courts.wa.gov/newsinfo/CivilLegalNeeds%20093003.pdf>.

In addition to conducting the Civil Legal Needs Study, the Task Force was charged with assessing the additional funding needed to allow the civil equal justice delivery system to provide meaningful access to appropriate civil legal aid services for those who need for legal assistance. This balance of this report responds to that charge.

A. The Washington State Civil Legal Aid Delivery Plan

The Supreme Court's Access to Justice Board has been assigned responsibility for the design and oversight of an effective and efficient system that provides the full range of necessary legal services for all low-income people in Washington State. The ATJ Board has overseen this system for the past 10 years, and the Task Force is confident that, as currently designed and within the limits of the existing resource base, this system delivers effective and economical legal aid services that are responsive to the client needs identified in the Civil Legal Needs Study. For the purposes of this report, we assume that the system will continue to operate substantially in accordance with the values, principles and concrete expectations outlined in the ATJ Board's current State Plan.¹

¹ The Task Force understands that the ATJ Board is in the process of revising the current State Plan. We have been advised by the chair of the ATJ Board State Plan Review Committee that any revision will be dictated by the findings of the Civil Legal Needs Study, resource availability and systems needs, and will not undermine or be inconsistent with this quantification analysis.

The Access to Justice Board's *Plan for the Delivery of Civil Legal Services to Low-income People in Washington State* (State Plan) is premised on the following understandings:

1. The Civil Equal Justice Delivery System Must Provide A Full Continuum of Client Service Capacities

Both the Civil Legal Needs Study and more than 30 years of legal aid delivery experience confirm that not every individual is in need of direct, extended legal assistance.² Nor does every significant legal problem have to be solved at the courthouse.

In a majority (estimated to be about 75%) of instances, information, early advice, self-help assistance, and the provision of brief services can lead to quick and responsive resolution of important civil legal problems. At the same time, a very significant percentage of low-income people who experience legal problems require more involved, extended representation. Consequently, the delivery system designed by the Access to Justice Board provides a continuum of legal aid capacities so low-income people can obtain the level of legal assistance needed to resolve their legal problem. This continuum includes everything from public legal information and education, early intervention legal advice systems, self-help systems for those capable of some self-representation with some level of assistance, targeted 'unbundled' representation with respect to discrete components of a legal problem, up to and including extended representation of individuals before state and local judicial and quasi-judicial tribunals.

2. The Civil Equal Justice System Must be Responsive to the Full Range of Legal Needs of Low-income People

The ATJ Board's State Plan directs that the civil equal justice system develop and maintain delivery capacities that are responsive to the full spectrum of legal needs of all low-income people in the state, including targeting and addressing legal needs unique to certain demographic groups. The Civil Legal Needs Study identifies the types of legal problems experienced by low-income people in Washington State.³ It also provides information about distinctions between the legal problems experienced by members of different social and cultural

² Extended legal assistance includes services performed by a legal aid or volunteer attorney that may include unbundled or discrete task representation, or full representation through to the resolution of a legal problem.

³ Nearly two-thirds of the problems identified in the Civil Legal Needs Study fall within the eleven subject matter areas authorized for state-funded legal assistance under RCW 43.08.260.

demographic groups as well as barriers that limit access to the justice system. The civil equal justice delivery system must develop the capacity to meet the full spectrum of these needs and the ability to target and address the needs unique to certain demographic groups.

3. The Civil Equal Justice Delivery System Must Ensure Equitable Access to Relevant Services

The ATJ Board's State Plan directs that there be reasonable equity of access to civil equal justice services throughout the state. This means that the quality and availability of civil equal justice services must be meaningfully and consistently available to those who need them, regardless of who they are, where they reside, the unique barriers to the justice system they may experience, the type or substance of legal problem they have, or the forum most appropriate for the resolution of the legal dispute.

B. Overview of Washington's Civil Equal Justice Delivery System

As noted previously, this analysis assumes the continuing basic structure of the civil equal justice delivery system in Washington State. The following is an overview of the four primary components of the system:

1. Intake, Access, Referral and Self-Help

In all counties except King, the legal aid system has been constructed around a statewide 'entry portal' or 'hotline' called CLEAR (Coordinated Legal Education, Advice and Referral). Operated by the Northwest Justice Project, this system is staffed by attorneys and paralegals and conducts intake and legal problem diagnosis, and provides legal education, support for self-help assistance, one-on-one advice and consultation, and limited representation for those who are able to access a telephone-based system.

2. Statewide Legal Services Programs

Two statewide staffed legal services programs – Northwest Justice Project (NJP) and Columbia Legal Services (CLS) – maintain regional and statewide offices that are staffed by attorneys and paralegals trained and experienced in the substantive laws that affect people in poverty. These programs provide statewide and regional capacity for clients whose problems require extended attorney representation. In addition, the programs help support the entire statewide delivery infrastructure by underwriting and coordinating essential training, technical support, advocacy

coordination, technology coordination and related functions essential to the system's capacity to operate effectively, efficiently and consistent with applicable legal professional norms.

3. Specialized Legal Services Programs

The efforts of the statewide staffed legal services programs are complemented by a number of small, staffed providers of civil legal aid services that provide services to specialized populations (e.g., Northwest Immigrants Rights Project, TeamChild, Street Youth Law Advocates of Washington), focus on providing services in a limited area of practice (e.g., Unemployment Law Project, Fremont Public Association, Legal Action Center), or serve targeted geographic regions (e.g., Spokane Center for Justice, University Legal Assistance).

4. Local Volunteer Attorney Programs

Throughout the state, thousands of local private attorneys, working through 24 county bar-sponsored programs provide more than 50,000 hours of free legal assistance to low-income people in response to a wide variety of client legal needs. In addition, a number of large law firms have dedicated internal pro bono programs, and many individual attorneys work in an unaffiliated manner to provide volunteer attorney services to low income and vulnerable people who have civil legal problems. Volunteer attorney services run the full continuum – from community based legal information and advice clinics to full, extended representation of low-income clients on the most complex legal matters by large law firms.

Each of these primary components plays a key role in the economical and effective delivery of civil legal aid services. Together, they operate as a highly efficient, integrated system for the identification and delivery of civil equal justice services in accordance with the principles of the ATJ Board's State Plan, outlined above. Their efforts are complemented and supported by an expanding array of partners including but not limited to a statewide web-based self-help resources system, locally based family law courthouse facilitators, a growing number of courthouse based family law justice centers, three law school clinical programs, county clerks and law librarians, locally based domestic violence victim advocacy programs, and many other law and legal related programs.

C. Current Level of Staffed Program Capacity and Resource Commitment to Civil Equal Justice Services

In the second half of 2004, the two statewide legal services providers will have a combined capacity of about 87 client advocates. Twenty-one (21) advocates will be employed by CLS. NJP will employ about 66 advocates.⁴ Eighteen (18) NJP advocates are dedicated to staffing CLEAR. Between them, NJP and CLS will maintain offices in 10 locations throughout the state, and will have the capacity to serve distinct client populations that experience unique legal problems or obstacles to access as a result of their legal, social, cultural or political status. In addition to the 87 advocates employed by NJP and CLS, about 18 FTA's are employed by specialized legal services providers throughout the state, for a total of 105 FTA's.

On a statewide basis, about \$19,000 is invested annually in the core delivery system components outlined above. These resources come from four primary sources at annualized levels identified below:

- Federal funding from the Legal Services Corporation (\$5.4 million per year).
- IOLTA funding administered by the Legal Foundation of Washington (\$4.8 million in 2004; anticipated \$4 million in 2005).
- Funding from the state of Washington (effective July 1, 2004, \$6.4 million per year).
- A wide range of small, medium and large grants and contracts, private contributions and dedicated government contracts (\$3.2 million).

D. Quantifying the Cost of Providing the Continuum of Legal Care Needed to Respond to the Legal Needs Identified in the Civil Legal Needs Study

1. Establishing the Optimal Client Service Capacity for the Legal Aid System

For the purposes of this analysis, the Task Force operates from the premise that the civil equal justice delivery system will be judged to be meaningfully available if it has the capacity to provide an appropriate level of legal assistance to the 140,000 households in Washington State that annually experience a problem that they understand has a

⁴ These are the expected staffing levels following the current restructuring of the staffed programs. This restructuring results from NJP's new responsibility as the fiscal agent for state funding, a role historically carried by CLS. The restructuring will result in a substantial downsizing of CLS and a near-corresponding upgrade of NJP's client service staffing. CLS will move from its historic role as a core provider of civil legal services in all regions of the state to a more limited purpose provider of legal assistance for low-income populations requiring specialized focus and in areas where other legal aid providers are unable to meet the existing need.

civil legal dimension and for which they recognize the need for some form of civil legal assistance.

There are more than 350,000 low-income households in Washington State.⁵ The Civil Legal Needs Study reports that more than 80% of these households (about 280,000) experience at least one civil legal need each year. Approximately 136,000 households experience a housing related legal need; approximately 90,000 households a family related legal need; 89,000 a consumer related problem; 83,000 an employment related legal need; 84,000 households a legal need related to the provision of municipal and public services; 60,000 households a legal need related to public benefits; 55,000 households a legal need related to health care; and smaller levels of need in other substantive areas.⁶

While the Civil Legal Needs Study confirms that 280,000 low-income households will experience at least one civil legal problem each year, it also documents that only about half of these, or about 140,000 low-income households, will experience a problem that they understand to have a legal dimension and for which they will realize a need some level of legal assistance.⁷

Low income people do not receive legal aid services for more than 85% of all legal problems they experience. Assuming that this percentage applies equally against all households that experience a legal problem, there are about 119,000 households that experience a legal need that they understand to have a legal dimension and for which they realize a need but are unable to secure legal assistance.⁸

2. Quantifying the Need for Different Types of Civil Legal Aid Services

(a) Expanding the Capacity to Address the Vast Majority of Legal Problems That Can Be Resolved Without Extended Legal Assistance – Expanding CLEAR.

⁵ This is households at 125% of poverty, and includes both Census and non-Census based (undocumented individuals, residents of state institutions) households.

⁶ Note that the study confirms that many households that experience one legal problem experience a number of related and unrelated problems. This is why the cumulative numbers of households affected in each substantive area exceeds the total number of low-income households.

⁷ The Civil Legal Needs Study documents that fifty percent of those who experience a civil legal problem do not understand that their situation has a legal dimension and that they should seek some level of civil legal assistance. This analysis focuses on the needs understood by those who experience them that the problem has a legal dimension and that they should seek legal assistance.

⁸ At an average rate of 3.3 legal problems per households, these households are likely to experience more than 390,000 individual legal problems.

Not every legal problem requires the extended individualized assistance of an attorney. Experience over many years demonstrates that, of those who experience an important civil legal problem and seek legal assistance, effective outcomes can be obtained at least 75% of the time through the provision of:

- Limited assistance and information available from court- or law-library based community justice centers, courthouse facilitators, domestic violence and sexual assault advocates, clerks offices, law libraries, and web-based legal information sites such as the Northwest Justice Project's Self-Help Resources Center www.nwjustice.org/law_center.
- Counsel and advice (including counsel to the effect that they may have no rights to protect or defend, or that, practically speaking, there is nothing that can be done in their case) through CLEAR and local legal aid and specialty legal services provider offices, local volunteer legal clinics, self-help plus programs, etc.⁹

NJP's CLEAR system is the single largest provider of individualized legal information, counsel and advice and self-help services for low-income clients in Washington State. CLEAR's 18 advocates respond to more than 17,000 low-income people seeking assistance with civil legal problems annually. Of these, nearly 11,000 receive legal information, counsel and advice, or brief services, and nearly 6,000 are referred to local civil legal services providers for extended legal assistance. Reflecting the growing lack of capacity for more extensive legal assistance throughout the state, CLEAR advocates are increasingly called upon to provide extended assistance in a larger number of cases than the specifics of the legal problems experienced would indicate.¹⁰ Despite this trend, CLEAR attorneys do not generally establish long-term attorney-client relationships. Where a client requires additional extended legal assistance, the CLEAR advocate will generally make a referral to the appropriate provider (pro bono, staffed, specialty, etc.) serving the geographic locality from where the client is calling. This accounts for about 5,700 cases per year.

⁹ It is impossible to quantify the number of people assisted by other providers of low levels of legal assistance. Many individuals seek help from multiple sources or on multiple occasions from the same source for the same legal problem. This is particularly true in the case of pro se litigants, who may use web-based resources such as NJP's web-based Self-Help Resource Center, the local courthouse facilitator (on multiple occasions), and local volunteer attorney legal clinics for help in solving a legal problem. NJP's Self-Help Resource Center is accessed by more than 30,000 unique visitors each month, and more than 850,000 individual legal documents and self-help brochures are downloaded each year.

¹⁰ According to NJP's Director of CLEAR Services, about 50% of all callers into the system require some level of extended legal assistance. This anecdotal assessment was recently substantiated in a recent national study on hotline effectiveness. See, Pearson, Davis, HOTLINE OUTCOMES ASSESSMENT STUDY, FINAL REPORT, PHASE III (Center for Policy Research Nov. 2002) (available at www.nlada.org/DMS/Documents/1037903536.22/finalhlreport.pdf). Because of a lack of field resources, CLEAR attorneys are spending much more time on these cases. This results in a substantially lower rate of referral to other providers (35%) than would normally be expected.

Because of resource limitations, the CLEAR system is not available to the nearly 25% of the state's eligible low-income population that resides in King County. The Civil Legal Needs Study confirms that the CLEAR system is overwhelmed by client demand originating in the 38 counties it serves – and this is true even though more than 50% of low-income people are unaware of its availability (CIVIL LEGAL NEEDS STUDY at 46, Fig. 18). Twenty-five percent of all callers cannot get through due to a busy signal. (*Id.* at 50, Fig. 21).

A recent demand volume and traffic analysis of the CLEAR system documents that, in addition to busy signals, on-line wait times are a significant obstacle to low-income clients securing needed help. Wait times currently average 30 minutes per call, with many callers being forced to wait between 40 and 60 minutes. In order to address both sets of obstacles (busy signals and wait times) without adding King County, this analysis indicated that an additional 32 lines need to be added and an additional 22 to 26 advocates need to be added to staff the system.¹¹ Opening the system up to low-income residents of King County will increase demand by 33%, requiring a corresponding increase in both the number of phone lines and client advocates. Thus, in order to achieve meaningful access to low-income clients throughout the state – including King County – given current levels of client demand, the CLEAR system needs to be expanded by not less than 32 advocates, bringing the overall staffing level needed to ensure meaningful availability to 50. Assuming that each CLEAR advocate will handle 580 cases per year,¹² an increase of this magnitude would result in nearly 18,560 additional low-income clients being assisted through the system – or a total average of 29,000 per year. At a fully-loaded cost of \$110,000 per CLEAR advocate, this increase will cost \$3.52 million per year.

(b) Expanding the Capacity to Respond to Legal Needs that Require Extended Legal Assistance.

Approximately 25% of households (about 29,750 per year) will require some level of extended legal assistance on matters of significant importance to the household, such as domestic violence, homelessness, lack of access to essential health care, denial of essential public services and the like.¹³ For these, there is no alternative to an extended relationship with an attorney.

¹¹ For the purpose of this analysis, the median number of 24 is used.

¹² Each CLEAR advocate also refers about 320 cases per year on average.

¹³ At an average of 3.3 legal problems per household, this represents about 98,000 civil legal problems per year. CIVIL LEGAL NEEDS STUDY at 23.

Accepting the assumption that an average staff attorney handles the higher end average of about 85 cases per year, the system will require the equivalent of 350 full time attorneys (FTA's) dedicated to extended representation.

(i) Volunteer Attorney Capacity

Washington State's 24 organized pro bono programs leverage in excess of 50,000 hours of volunteer legal services per year. Using 1500 volunteer hours as the equivalent of a full time attorney, the current organized volunteer legal aid system generates assistance equal to 33 FTA's. A substantial – but unquantifiable – amount of volunteer assistance to low-income clients is made available directly by private and governmental attorneys outside of the organized pro bono system. Pro bono program directors and others knowledgeable in this area estimate that these services add an additional 25,000 hours of pro bono assistance statewide annually, or the equivalent of yet an additional 17 FTA's worth of legal assistance.¹⁴ Incorporating these additional hours, volunteer attorneys provide the equivalent of 50 FTA's worth of legal assistance with a market value well in excess of \$11 million to low-income residents in Washington State each year.

Pro bono program leaders in Washington State recognize that there are practical limits on the ability to leverage substantial additional volunteer services. Nevertheless, they estimate that aggressive, sustained and well-supported efforts to increase pro bono participation could result in a 50% increase in the provision of volunteer legal aid services across the state over the next five to seven years. This would potentially add an additional 25 FTA's to the delivery system's capacity to provide extended representation. These leaders believe that this 50% increase will effectively saturate the private bar's capacity to provide responsive pro bono services. To realize such an increase, there would have to be a substantial investment in staffing necessary for expanded recruitment, support, training, mentoring and related activities.

An increase in volunteer services of this magnitude would result in an average statewide active pro bono participation rate of about 25% of licensed attorneys in Washington State. This compares favorably with the most effective and comprehensive pro bono civil legal aid systems elsewhere in the nation.¹⁵ An

¹⁴ The WSBA has recently established a system to capture information about volunteer attorney contributions that meet the definition of pro bono under revised RPC 6.1. The analysis from the first year of pro bono reporting will be available in July 2004.

¹⁵ Active pro bono involvement refers to attorneys providing 20 or more hours of pro bono service per year. According to the ABA's Center for Pro Bono, the most successful programs and states with the greatest level of active pro bono involvement in the delivery of civil legal services to low income people achieve participation rates of between 25% and 35% for attorneys providing 20 or more hours of legal assistance. Reported pro bono

expansion of pro bono services of this magnitude would likely require a near-doubling of the current level of fiscal support for pro bono programs and services from the current level of \$2,080,000 to about \$4,000,000 per year.

(ii) Full Time Staff Attorney Capacity (All Programs)

As of July 1, 2004, there will be approximately 105 FTE attorneys currently employed full time, providing extended representation of low-income clients on civil legal matters throughout the state. This number includes attorneys currently employed in the statewide staffed (Columbia Legal Services and Northwest Justice Project) and the specialty legal services provider programs (Northwest Immigrants Rights Project, Legal Action Center, Unemployment Law Project, Legal Action Center, Fremont Public Association, University Legal Assistance, Seattle Community Law Center, Northwest Health Law Advocates, etc.). Of these, 18 are dedicated to CLEAR, leaving 87 available to provide extended client representation. Combined with the 50 FTA's available through volunteer attorney networks, there are currently a total of 137 FTA's available to provide extended client representation. Taking into consideration the additional potential 25 FTA's that will result from expanded pro bono efforts, this leaves a capacity gap of 188 FTA's to address the more intensive legal needs of low-income residents.¹⁶ At an average fully loaded cost of \$120,000 per year,¹⁷ it will take \$22,560,000 per year to close the capacity gap.

3. The Cumulative Capacity and Resource Gap

The total amount of funding needed to effectively address the needs of the 140,000 low-income households that are aware of their need for civil legal assistance requires an increase of \$28,080,000. This breaks down as follows:

(a) Meeting the needs of low income households that can be effectively served through legal education, advice, self-help and other such services

➤ Expand CLEAR – \$3.52 million

involvement and active pro bono involvement has increased significantly in recent years in both Maryland and Florida, two states with mandatory reporting of pro bono contributions. Washington State has a voluntary system that allows for pro bono reporting through the license renewal process.

¹⁶ These are full time legal aid attorneys. The Task Force leaves to the ATJ Board the issue of where, how and with what organizations these attorneys are best placed to achieve the delivery objectives of its State Plan.

¹⁷ This 'fully loaded' cost includes the cost of salary, fringe and necessary overhead (including rent, non-personnel, secretarial support and state support). The figure is in 2004 dollars.

(b) Meeting the Need for Extended Representation

- Add 25 FTA's by investing in expanded volunteer attorney contributions – \$2.0 million
- Fill the remaining gap by adding 188 full time attorneys (FTA's) – \$22.56 million

Total: \$28.08 million per year

In RCW 43.08.260, the state legislature has defined the areas of currently allowable representation that can be supported with state funding. Fully 65% of the needs identified in the Civil Legal Needs Study fall within these categories. As documented in the Civil Legal Needs Study, the vast majority of these implicates basic human needs and are properly the concern of state government. Applying the 65% figure to the overall level of additional funding needed to address the full spectrum of legal needs identified in the Civil Legal Needs Study, the increased level of state funding needed to address these needs is **\$18,252,000 per year, or \$36,504,000 per biennium.**

E. Closing the Capacity Gap

Due to flat federal appropriations and limited prospective growth from IOLTA and other sources of funding, and even with optimistic assumptions about growth in volunteer contributions from private and governmental attorneys, a substantial gap exists between the need for services and the resources to provide those services. The Task Force believes that it is a fundamental responsibility of the state legislature to provide the funding to address this gap.

While the Task Force has considered the potential for developing a dedicated tax revenue stream to support civil equal justice services, the legislature has historically been reluctant to follow this approach. Instead, it has appropriated revenues from filing fees and the general fund for civil legal services.

Increased filing fees on civil cases, even if dedicated solely to civil equal justice services, will not close the gap. Counties currently receive 54% of these revenues and would be resistant to dedication of those revenues to legal services instead. While a potentially significant source of additional revenue, a filing fee increase of \$90 will generate only about \$4 million per year – about 22% of the overall additional needed funding. The most natural and most probable source for the balance of needed funding then continues to be the state general fund.

Under current state statutes only certain legal categories are eligible for state support. The need in those categories is \$18,252,000 over current appropriated levels – \$36,504,000 per biennium.¹⁸ The Task Force recognizes that the legislature faces difficult fiscal choices from competing needs. Nevertheless, the Task Force believes that the crisis in civil equal justice funding, as documented by this report, requires an immediate and sustained response. We therefore recommend that the legislature phase in the required increases documented in this report over the next three to four biennia. Such an approach recognizes the urgency and gravity of the need for civil equal justice funding and will allow for an orderly expansion of services to meet the needs for legal services over time.¹⁹

¹⁸ This number does not take into account the likely growth in the poverty population (which grew more than 18% between 1990 and 2000) or the increased costs of operation over time (fiscal indexing). This number provides a snapshot – a benchmark against which other variables such as these can be run.

¹⁹ Recognizing that it is unlikely that the full level of funding required will be obtained in the next one or two biennial budgets, it will be necessary to index the funding requirement so that the overall figure tracks cost increases over time.