

District of Columbia Bar Foundation
Summary of Listening Sessions with Legal Services Providers
January, 2009

I. Introduction

Due to the current financial crisis, and in particular the dramatic decrease in IOLTA revenue, the Bar Foundation is anticipating at least a 50% decrease in funding available for award in its June 2009 grant round. IOLTA revenue, which is the principal source of funding for the Bar Foundation's private grants, is currently at 50% of last year's revenue level, even before the Federal Reserve cut the Federal Funds rate to an all-time low of 0.25%. While the Bar Foundation is working hard to mitigate the funding gap created by the IOLTA losses, the reality is that there is simply less revenue available to fund the legal services that thousands of individuals in our community depend upon. The Foundation recognizes that this funding loss – in combination with concomitant decreases in other foundation giving, government funding, and private donations – is certain to have a negative impact on the ability of many legal services organizations to serve their client communities.

The Bar Foundation is in the process of considering how to best allocate available funds in its June 2009 grant round to mitigate the impact on the client community and maximize the services that can be provided. To assist the Bar Foundation in setting priorities, and in making thoughtful and effective grant decisions, the Foundation convened a series of listening sessions with legal services providers. At these sessions, the Foundation solicited information about increased need for services fueled by the financial crisis, as well as the capacity of organizations to meet current as well as increasing needs given their growing financial constraints. Specifically, organizations were asked to provide input on the following questions:

- a) What are you seeing/hearing from the client community? Any changes in the level and types of services requested? Any trends?
- b) What fiscal impact are you seeing and what fiscal impact do you anticipate in costs/income as a result of the economic downturn?
- c) What kind of contingency planning has your organization and board done for this coming fiscal year and the next?
- d) What conversations – or thoughts – have you had internally and with other providers about achieving service delivery efficiencies in order to minimize the impact of funding reductions on the client community? This includes partnerships, co-location, collaboration, merger, expanded pro bono, joint projects, etc.

Executive Directors, Board Chairs and other representatives from twenty-eight organizations participated in the listening sessions and provided candid and useful

information both about community needs and organizational constraints.¹ The information they provided is summarized below. Generally, most organizations reported increasing demand for services across a broad range of substantive areas and a marked decrease in donations and other resources to meet those needs. Most providers stressed that they are committed to maintaining service levels for clients but are concerned about how to do so in the face of dwindling resources. While some organizations have reserves and/or have created contingency plans that may permit them to temporarily compensate for lost revenue, most organizations are struggling to pare down already lean budgets. Organizations shared ideas for maximizing resources, including leveraging existing resources, identifying new fundraising pools, harnessing pro bono resources to fill gaps and expand capacity, expanding collaborations with other providers, increasing systemic advocacy, augmenting resources for pro se litigants, and closely examining service provision practices to identify potential efficiencies.

The Bar Foundation is extremely grateful to the listening session participants for their candid sharing of ideas and observations. This report summarizes the information provided during the sessions, as well as some supplemental information provided after the sessions. It presents the information in aggregate form, and identifies organizations only with prior approval. The report is posted on the Bar Foundation's website at www.dcbfoundation.org.

II. Summary of Responses

This section summarizes the information elicited during the listening sessions. It is organized into three sections: 1) changes and increases in client needs; 2) fiscal impact on providers (this combines questions “b” and “c” above); and 3) strategies for achieving efficiencies.

A. Changes and Increases in Client Needs

Providers were asked to describe changes they are observing in the level and types of services sought by the client community. They identified a broad range of areas where need seems to be increasing and also forecast anticipated trends over the next year. Before recounting those observations, it is important to note that the information provided is largely anecdotal. Providers were asked only to provide their impressions about how the needs landscape is changing. They were not asked to compare their caseloads to previous years or to do any other quantitative analyses either about the percentage increase in need or about the onset date of noted changes. In the few instances where organizations provided numerical data either during or outside of the listening sessions, that information is footnoted below.

This report should not be read as a comprehensive needs assessment. It recounts, in summary fashion, only the information provided during the listening sessions and limited

¹ See Appendix A for a list of legal services organization participants as well as Bar Foundation and Access to Justice Commission representatives.

supplemental information provided afterwards. It draws on the perceptions and projections of experienced legal services providers but includes very little raw data. The information we have is a function of which organizations participated in the listening sessions and, more fundamentally, how many providers serve clients in a particular substantive area. If this report contains little or no information about a particular area, this may be because there are few advocates representing that population, or that providers either did not participate in -- or did not speak at length in -- the listening sessions.

Generally, organizations reported that their clients are experiencing more job loss, less housing stability, increased need for public benefits, less access to District-funded programs, and increased stress and need for mental health services. More clients seem to have both legal and social services problems, increasing the time and effort required of attorneys to resolve individual cases.² Applications for assistance have increased across many organizations, although it is impossible to determine whether this is due primarily to an increase in need or whether it is also fueled by enhanced outreach efforts.³ It is also unclear whether the spurt in assistance requests represents more aggressive efforts by individuals who were already poor before the financial crisis, or whether it is fueled by newly poor individuals seeking assistance. When asked about the approximate percentage increase in applications, a number of organizations estimated a 15 – 20% increase in the last three to six months. Some programs reported increased assistance requests from Spanish-speaking clients and from immigrants. Constriction of resources across the network is also straining the system. As District-funded programs are cut, providers expect a further increase in demand.

More specifically, providers identified increased needs in the following substantive areas:⁴

Housing:

Housing advocates observe an increasing number of tenants facing eviction. This includes an increase in the number of instances where tenants simply cannot pay their rent and therefore face non-payment of rent cases. Housing conditions seem to be deteriorating as landlords lose revenue and/or access to financing and consequently cut corners or fail to perform upkeep and maintenance tasks. Advocates also report an increase in foreclosure cases⁵ and a related increase in the number of tenants who are illegally evicted during foreclosures against the landlord. They also sense an increase in the number of cases where tenants' rights are violated when buildings change hands between landlords. In addition,

² One provider estimated that 28% of its clients are now manifesting significant social services issues as well as legal issues.

³ One provider estimated that there has been a 20% increase in requests for services from his organization in the last three to six months. Another provider estimated a 26% increase in intakes in December, which is usually a slow intake month for the organization.

⁴ Except as otherwise indicated, most providers report that the described increases and changes in client need have occurred over the last three to six months.

⁵ For example, one organization reported no foreclosure cases in 2007, as contrasted with 28 cases in 2008.

some advocates are seeing more cases where rents are raised inappropriately. As private and public financing resources dwindle (e.g. the moneys available through the Housing Production Trust Fund are decreasing), there seem to be more cases where tenants are able to negotiate the purchase of their building but are then unable to secure financing to complete the transaction. One provider also noted a substantial increase in Office of the Tenant Advocate (OTA) petitions. The provider noted that OTA practice has improved substantially and is now viewed as a viable case resolution avenue.

One provider projected that, in the future, there are likely to be more tenants involved in tax sale cases as landlords stop paying real estate taxes. The District is not current on these collections so such cases are not yet materializing in substantial numbers.

Homelessness:

Advocates for the homeless are reportedly seeing an increase in the number of individuals who are homeless. The shelters are full, the waiting lists are impossibly long, and the District government is in the process of implementing budget cuts that will negatively impact homelessness services. This is exacerbated by systemic changes in public programs (e.g. the Housing Production Trust Fund) that will further reduce the availability of affordable housing. Individuals who are falling from the middle class into poverty are starting to seek services but advocates sense that what they have seen so far is only the tip of the iceberg. They believe that most of these individuals are not yet seeking services, either because of the stigma associated with homelessness or because they are unaware of legal services resources and how to access them. These advocates also note that increases in clients seeking their services tend to trail behind increases at other organizations because clients only become homeless – and therefore seek assistance from their organization -- when all of their other efforts have failed.

In terms of future trends, advocates expect to see an increasing number of homeless veterans.

Domestic Violence:

Attorneys report substantial increases in the number of clients seeking protection orders and other legal assistance to flee violent relationships.⁶ They are also observing a marked increase in the severity of the violence reported. Attorneys note that this is not a surprising consequence of the financial crisis since stress over money and employment are – even in good financial times – one of the most common triggers in violent relationships. Fear and anxiety generally tend to increase both the number and severity of violent incidents.

⁶ One provider reported a 10 – 15% increase in intake center traffic. Another organization reported a 12% increase in its case load since the end of the summer.

Attorneys also sense that the financial crisis is increasing the barriers victims face when they attempt to leave violent relationships. Housing resources are greatly diminished, and shelters are oversubscribed, making it difficult for victims to flee their abusers. The difficulty of securing – or maintaining – adequate employment is also a significant barrier since victims often have no other sources of income once they leave their abusers. Advocates report that this issue is particularly acute for undocumented victims since they generally do not qualify for public benefits. One provider noted that its clients are typically employed in industries where demand is shrinking – house cleaning, child care, etc. These clients were only marginally employed before the financial crisis and are now finding it impossible to support themselves.

Providers report that their network is already feeling the strain of increased requests for services. The domestic violence intake centers are more backed up because of increased requests for assistance, as well as a broadening of the types of social services that clients need. This backup is itself a barrier to victims escaping violent relationships. Cases also seem to be requiring more resources (e.g. it is harder to accomplish service of process because more respondents lack stable housing and are therefore harder to serve).

One provider noted an increase in service requests from immigrants speaking languages other than English or Spanish, possibly because word has spread about the interpreter bank.

Family Law:

One provider noted an increase in the number of custody cases generally.

Child Welfare:

Advocates expect an increase in abuse and neglect filings, particularly as the District decreases services designed to support families and keep children out of foster care. It has also become more difficult to help teenagers who are aging out of foster care because there are fewer available services, as well as decreased housing and employment resources in the market generally. One provider also senses an increase in truancy cases and more demand for guardians ad litem in custody cases. The provider also noted that currently the primary challenge is not the increase in the number of cases; it is that the cases coming in are much more labor- and time-intensive because of diminishing availability of supportive services.

Public Benefits:

Providers report an increase in public benefits applications. A significant number of applications seem to be for individuals who are newly poor. Because these

individuals are navigating the system for the first time, the applications tend to require more support and assistance from providers. Providers generally expect the number of applications for public benefits to increase as newly poor clients overcome the stigma of applying for government assistance.

Providers also sense an increase in the number of cases among individuals who were poor before the financial crisis. They speculate that before the crisis, there were likely a substantial number of individuals who qualified for benefits but didn't apply for them – or didn't appeal denials or other sanctions – because they could manage without them. As their financial situations become more marginal, more of those individuals seem to be seeking benefits for the first time or acting more aggressively to appeal denials or terminations.

Bankruptcy, Small Claims, Consumer, Tax:

Advocates observe an increase in the number of people seeking advice about bankruptcy.⁷ They also report some increase in small claims cases, particularly debt collection. Some providers report an increase in consumer cases, stemming from incidents that occurred before the financial crisis began. One provider speculated that litigants are seeking relief in consumer matters now because their financial situations have deteriorated and they can no longer afford to let these matters go unresolved.

Advocates are seeing some additional tax cases but expect a dramatic increase next year. One advocate highlighted a potential increase in post-foreclosure tax debt cases (i.e. the foreclosure represents a cancellation of indebtedness which gives rise to a tax obligation) at the end of the year. Some advocates are already seeing more Earned Income Tax Credit (EITC) cases -- for example, cases where individuals are audited and can't produce sufficient documentation to prove they are entitled to the credit.⁸ One provider noted that in economic downturns, individuals are generally more aggressive on their tax returns and seek more assistance.

Providers expressed concern about how few clients take advantage of the EITC. Many clients do not know they are eligible for the credit or have difficulty producing the paperwork for it. Providers agreed that it is crucial to educate clients about the EITC and briefly discussed the feasibility of getting a question about the EITC onto providers' intake forms. This may also be a good pro bono initiative.

⁷ One provider who reports a significant increase in bankruptcy cases indicated that the increase started in early 2008.

⁸ Participants in this listening session had an extended conversation about the importance of getting all eligible families to claim the EITC. The Commission and Consortium will consult providers about the best way to proceed.

HIV-Related Services:

One provider reports a substantial increase in the need for HIV-related legal services, though not necessarily related to the financial crisis. Even before the economic downturn, the need for HIV-related legal services was steadily expanding. HIV rates in the District are soaring. In addition, as treatments improve and clients live longer and healthier lives, they have more – and more complex – legal issues to manage (e.g. workplace-related issues, managing debt).

Advocates sense that the financial crisis has further increased the need for services. They note an increase in the number of clients losing their jobs and health insurance (particularly dangerous events for individuals living with chronic health conditions) and those seeking help with COBRA issues. They are also seeing more debt cases. They also have observed more instances where clients are worried that their HIV status or other health problems will make them more vulnerable to layoffs. They are concerned about being viewed as a “weak link” and are therefore more reluctant to ask for the accommodations or Family & Medical Leave Act leave that they need. Providers note that timely access to legal services is particularly important in the health insurance arena, where certain public programs must be accessed before health insurance lapses. (e.g. there are government programs that can help unemployed clients living with HIV to pay COBRA premiums but the client’s application must be processed before the COBRA deadline passes.)

Employment:

One provider reports increased traffic at the organization’s employee rights clinics,⁹ including increased need for assistance on unemployment issues¹⁰ and wage and hour cases. Advocates expect a dramatic increase next year when clients who are currently over-income become eligible for services. A provider forecast that demand is going to far outstrip supply in this area so its staff is focusing on improving agency process so that employees can better navigate without attorneys. They are also focusing on systemic changes at the Department of Employment Services that would mitigate the need for representation.

Guardianship:

One provider notes an increase in the number of requests for guardianship. It speculates that financial insecurity and employment demands are leading some family caregivers to conclude that they cannot directly provide care for their loved ones; they therefore seek to have the court appoint professionals to serve as

⁹ One provider reported that between September and December it had to turn 69 people away from its clinic.

¹⁰ One provider estimated that it had 3 unemployment cases in the last quarter of 2007 and 28 in the last quarter of 2008.

conservators or guardians. This provider expects the need for respite care to grow significantly.

Institutionalized and Post-Institutionalized Clients:

Providers serving currently incarcerated individuals note that the financial crisis does not directly impact their clients but they fear that revenue cuts to the criminal justice system will lead to increased backlogs and shortcuts and therefore more cases in the future. They also note that as prisoners' families become poorer, and are unable to provide copies of papers or secure other documentation, organizations have to use their own resources to compensate.

Similarly, it is more challenging to provide reentry services – both for adults and for juveniles -- where housing and employment opportunities are diminishing and clients' families are at risk of losing their homes and/or are otherwise unable to provide financial support.

Although the financial crisis seems to be responsible for most of the increase in need, providers also described increases that are due to other sources. Although these listening sessions were focused on changes brought about by the financial crisis, we have included below information about these other community pressures since they are impacting the case loads – and resource needs – of providers.

Immigration/Asylum:

A few providers report an increase in the number of people seeking asylum. One provider speculated that this is due to efforts to close out old cases. Clients report that they are being turned away from other providers, or that the waiting lists are too long. As is true in other substantive areas, constriction in available services is yielding increased demand for the providers still accepting new cases.

One provider reports an increase in the number of detained individuals needing legal representation. This is likely due to increased law enforcement activity. The provider noted that local police activity, rather than federal workplace raids, is increasingly responsible for the rise in detentions. There is pressure on even more liberal jurisdictions to magnify efforts to identify undocumented individuals.

Another provider reports an increase in non-detained clients in removal proceedings. The provider also notes a substantial increase in the number of clients seeking assistance with u-visas, which are available to certain immigrants who have served as witnesses in criminal prosecutions.¹¹ Providers offer

¹¹ This provider reported that it provided consultation or assistance in 52 cases during all of 2008. From October 1, 2008 through December 31, 2008 it provided assistance in 16 cases and saw an additional 10 cases in the first three weeks of January 2009.

different explanations for this increase, including a rise in anti-immigrant sentiment and behavior, not only in the District but across the United States. They also note a substantial increase in crimes against immigrants.¹² One provider also credits local press coverage of the new u-visa regulations.

Education:

Advocates report a spike in placement issues due to the school closings. They are seeing cases of children who --- when their school closes – are moved to inappropriate placements. In some instances these are arising as discipline cases when those inappropriately placed children do not function well in their new schools.¹³

B. Fiscal Impact on Providers

Providers were asked to comment on the fiscal impact of the economic crisis on their organizations. In response, they discussed fundraising challenges, changes in foundation and government support, impact on their endowments and endowment-generated revenue, whether they had – and were in a position to tap into – reserves, contingency planning, and creative strategies for generating additional revenue or cutting costs.

Revenue Challenges:

In general, organizations estimate that they are experiencing a 15 – 20% decrease in private contributions, as well as significant declines in revenue from foundations and government sources.¹⁴ Although there is some variation among providers, law firm giving – which is the primary source of private donations for most organizations – has generally declined, with deeper declines expected. While some organizations have experienced increases in giving by some private individuals, it is not enough to offset the general decline in contributions. Foundation funding has also become insecure for many organizations. Foundations are generally reporting reduced moneys available for allocation and are therefore cutting grant awards. Although foundation practices vary, providers generally report that if you do not already have a relationship with a funder, it is difficult to get a foot in the door. They also report differing responses to new projects: some foundations remain interested in funding new initiatives; others have indicated that they will not fund any new projects. Organizations also report that many foundations are already issuing warnings about funding decreases for next year. Many organizations are struggling to identify funding sources for general operating funds. Adding to this already bleak picture, some organizations have been adversely affected by the Madoff scheme. Also, several organizations had funding commitments from particular foundations or large institutional donors that are likely not to materialize.

¹² One provider stated that there has been a 400% increase in anti-immigrant crime nationally.

¹³ One provider reported seeing a lot of discipline cases in September; it is unusual to see discipline cases so early in the school year. The provider surmises that this is due to problematic placements.

¹⁴ There is considerable variation between organizations but this range seemed to resonate with providers.

Government funding is also an unknown. Some organizations have multi-year grants that provide stable funding. Others are concerned about the ongoing availability of government funding. Those providers that have endowments are reporting decreases in generated revenue. Providers with matching fund resources or other mechanisms for leveraging dollars are finding that lost dollars have an exponential impact. For every dollar they lose in fundraising, they lose additional monies in lost matching funds and lost leveraged resources (e.g. pro bono resources that can be supported through the matched funds). Also, organizations with a large proportion of restricted funds are finding that they do not have the flexibility they need to shift resources. Some law school clinics pointed out that they are in a different revenue position than stand-alone legal services organizations. They are greatly impacted by the financial situation of the larger institution, and in their alumni fundraising efforts have to compete with other institutional priorities like financial aid.¹⁵

One provider reported that the tightening of credit for non-profits, particularly by credit card companies, is becoming a significant problem. This organization utilizes credit cards to help deliver emergency financial assistance to clients and to compensate for delays in government funding. Limitations on credit hinder the provider's ability to operate effectively and reduce the tools it has to weather the financial crisis.

Fundraising Strategies:

All organizations report that they either are increasing, or intend to increase, fundraising efforts to try to mitigate the revenue gap.¹⁶ Virtually all described the same plan: getting more funds from DC law firms and DC lawyers. They acknowledge that law firm giving is likely to be an unknown for at least several more months. A number of board chairs who are partners at large firms observed that firms are struggling to project their revenue streams and will likely be hesitant to commit significant funds until there is more certainty. Although the Access to Justice Commission and the Bar Foundation are working hard to persuade firms to maintain or even increase their institutional giving during this time of crisis for the legal services community, most providers seem to realize that they cannot count on law firm giving to compensate for revenue losses. Some therefore report that they are expanding their focus to individual lawyers and alumni of their organizations. Some organizations are reaching out to corporate donors but note that previous efforts have not been fruitful. Some organizations are working hard to identify new fundraising sources – both institutional and individual – but are generally not optimistic that these efforts will be sufficient. A major concern is donor fatigue as all providers appeal to the same communities for additional funds.¹⁷ Providers also

¹⁵ Some law school clinics noted that matching grants have been particularly useful in their fundraising efforts with alumni and in their funding discussions with law school administrators.

¹⁶ Two organizations expressed less concern about fundraising because they are expecting attorneys' fees awarded in some major cases to mitigate the fundraising gap.

¹⁷ Since organizations are expending resources approaching the same potential donors, some providers suggested the possibility of using a jointly funded development person and concentrating these efforts. Other providers expressed concern that such a strategy would detract from the ability of individual providers to make personal connections and use their individual client stories to raise donor interest. There

recognize that, with the collapse of Fannie Mae, law firms will be under significant pressure to support social services organizations as well.

A few organizations have identified creative strategies to increase funding. For example, one organization has started to seek reimbursement from the Crime Victims Compensation Fund (CVCF) for counseling services provided to clients, and to accept more cases for which this funding is available. Organizations are working together to ensure that clients are referred to that organization for CVCF-funded counseling services.

Budget Cuts, Reserves, Contingency Planning

Across the board, organizations are scrutinizing their budgets and aggressively cutting any possible expenses. Many organizations report that their boards are actively engaged and are reviewing budgets at least quarterly, and in some cases monthly. Most providers are strongly focused on maintaining as much service provision as possible and are therefore making any cuts they can identify that do not reduce staff attorney resources. It was clear that providers consider client services to be paramount. Strategies they are considering (or in some cases implementing) include: not sending staff to trainings, eliminating travel, freezing new initiatives, moving to cheaper health care plans, increasing employee health care contributions, ceasing 401K contributions, encouraging employees to participate in loan forgiveness programs, cutting use of consultants, renegotiating leases, leasing space to other providers, and investigating whether law firms that are trying to off-load space would rent at below market value.

The shortcoming of budget cuts is that most providers were already operating with exceedingly lean budgets. Legal services organizations generally have a culture of operating with very few resources and very little waste. When they cut, they are cutting into bone, not fat. For most organizations, the largest part of their budget is staff costs. The cutting measures described above may save some money around the edges, but they will not come close to redressing the serious revenue gap that many organizations are facing. The only real savings is in cutting staff, which means cutting services.

Providers articulated a broad spectrum of approaches to preserve the provision of core services. Some organizations believe that they can survive 2009 by dipping into their reserves (see below) and are not currently cutting any services. Most organizations have already instituted hiring freezes and are not filling open positions.¹⁸ Many are aggressively using fellows, interns, law students,¹⁹ retired attorneys and other volunteers to absorb work. Other organizations have started making cuts by eliminating positions other than line or supervisory attorneys. For example, some organizations have eliminated their pro bono coordinators, their translators, or other non-legal staff. The organizations noted the negative impact these cuts will have on their ability to serve clients. Some organizations are making internal staff changes to focus on core services

is a tension between reducing redundant staff efforts between organizations and permitting organizations to personalize their appeals.

¹⁸ One provider reported that it may be able to add staff because of awarded attorneys' fees.

¹⁹ At least one provider is exploring ways to have students work for class credit.

and reduce staffing for newer initiatives. For those organizations with a large percentage of restricted funds, it is difficult to make such changes because they lack flexibility in how to reallocate funds. Some organizations are also eliminating other initiatives altogether that do not provide direct client representation. This includes cutting community organizing initiatives and systemic advocacy efforts. In some cases it involves cutting projects or service sites altogether. Some organizations are weighing the pros and cons of using furloughs and unpaid leave to keep as many staff members as possible versus cutting some positions and maintaining a smaller staff at full employment levels. Most organization are trying to do more work with less staff and are asking attorneys to work harder in the face of job insecurity and reduced resources.

There is great variance among organizations as to whether they have reserves and whether they consider it prudent to use them. Generally speaking, the larger organizations are the most likely to have reserves and to consider dipping into them for 2009. Even those organizations that are prepared to use their reserves indicated that it is a one-year option only. There are some organizations that do have reserves but are not planning to use them. Instead they are taking more aggressive steps now to restructure and make cuts. What these organizations have in common is that, during a past financial crisis in the organization, they protected services rather than the health of the organization. Based on those experiences, they have concluded that they should not tap into their reserves again and that they must instead protect the core of the institution and situate themselves to rebuild when the financial crisis passes. Those organizations without any reserves will have no choice but to make cuts if they cannot close their revenue gaps.²⁰

These are obviously very painful decisions for organizations and, where possible, most providers are pushing off institutional changes and hoping to weather the crisis for as long as possible. Providers that are staving off cuts for now are extremely concerned that the worst is yet to come and fear that cuts will be unavoidable in 2010 unless revenue resurges. Even some organizations with significant reserves recognize that they will likely have to cut services in the future; they are taking steps now to consider how to strategically downsize in a way that maximizes core services and situates the organization to grow again once the crisis passes. Those organizations that are cutting services and restructuring now are doing so with tremendous regret. Uncertainty throughout the network is also impacting service provision since providers cannot effectively do outreach if they are not sure they will have the staff capacity to handle the resulting cases.

²⁰ It is important to note the ripple effect that occurs when a provider cuts services. Some providers are intertwined in their provision of services and the loss of one provider impacts service provision more broadly. For example, a number of services provided to domestic violence victims at the domestic violence intake centers are tied to the existence of a civil protection order (CPO). The constriction of CPO services has, in addition to reducing the number of clients who receive legal assistance with their CPO cases, impacted the provision of these related services. More generally, service cuts increase the strain on the network as a whole.

C. Strategies for Achieving Efficiencies

Providers were asked to discuss what steps they are considering or taking for achieving efficiencies, including increased collaboration, partnerships, co-location, merger, and expanded pro bono efforts. During the listening sessions, participants brainstormed a broad range of ideas and provided some candid assessments of the utility of different strategies. Some organizations seem to be in the preliminary stages of considering innovative measures to maximize the use of existing resources. However, it does not appear that many organizations are taking active steps at this point to institute such changes, nor is it clear that there has been any focused analysis of how organizations would actually implement these strategies or whether they are likely to have a substantial impact on service provision. As is described below, a few organizations have taken concrete steps to implement efficiency measures but overall the community seems to be in the exploration stage.

The strategies discussed at the listening sessions include the following:

Increased collaborations with other legal services organizations:

A number of providers are considering ways to expand capacity and reduce duplicative services by increasing collaborations with other legal services organizations.²¹ Several directors noted that, at the staff level, discussions about how to collaborate to maximize case coverage preceded the financial crisis and are ongoing. Shrinking resources have made it necessary to consider more formal approaches at the institutional level. These include the following:

- **Identifying a *type of case* that can be referred in its entirety to a different organization.** A few providers are considering ways to focus their services and identify case types that can be exported to other organizations. For example, two education services providers are trying to reduce overlap between their organizations by having all cases referred by a particular medical provider handled by one organization.
- **Identifying a *service* that can be concentrated in another organization.** Another approach is to identify particular services that can be concentrated in one organization. For example, in the domestic violence community, one service provider seems to be better situated than others to provide counseling services. Organizations are working together to refer clients to that provider for counseling services.
- **Systemically dividing different services among organizations.** One provider indicated that it has initiated broader conversations with other

²¹ The amount of collaboration in different subject areas differs significantly. Some communities – such as the domestic violence and immigration communities – already consider themselves to have strong collaboration practices and are examining ways to further refine what they already do.

providers about dividing different types of cases among their organizations (e.g. one organization would handle affirmative custody cases, another would handle custody defense cases). This would represent more of a network approach to reordering service provision than currently exists.²²

- **Dividing different advocacy approaches among organizations.** Currently a number of organizations perform multiple advocacy tasks, from individual representation to budget and systemic advocacy, within their organizations. Some providers suggested that organizations separate these tasks, concentrating case representation in one organization, and different advocacy projects in others.
- **Collaborating to provide supports to attorneys.** In addition to considering how service provision might be restructured to create efficiencies, some organizations also suggested collaborating on joint trainings and technical assistance, information-sharing, and referrals. These measures will not directly reduce the existence of duplicative services but they will create efficiencies by reducing the redundant resources expended by individual organizations to support their programs.

Although most providers agree that some duplicative services exist within the network, many also emphasize that it is difficult to define when services are truly duplicative. For example, although a number of organizations provide services in custody cases, if the service is defined more narrowly – e.g. “custody services for domestic violence victims” – there is considerably less duplication. Some providers argue that these services are not fungible. The District has a number of specialized providers that focus on vulnerable populations (e.g. clients living with HIV and AIDS, clients vulnerable because of their sexual orientation, domestic violence victims, clients with disabilities). They do not provide legal services in a vacuum; they are also providing clients with advocates who are sensitized to the particular challenges these clients face, co-located services such as health care and counseling, a community of peers who are struggling with similar challenges, and a place where clients feel safe discussing issues that may be stigmatized in other environments. Although it is true that these clients could receive excellent services at a general legal services organization, many advocates feel that they are simply not served as well at an organization that cannot provide these other supports. Some advocates believe that certain clients may not seek services from non-specialized organizations, particularly if they are from countries where there is distrust of public and quasi-public institutions.

One provider noted that he is less concerned about duplication of services than about the consequences of losing an organization that is the sole provider of services in a particular area or for a particular population. There is currently no mechanism to deal with the loss of all services in a substantive area. Given resource constraints, it is unlikely that any

²² It is important to note that, although the legal services community had expressed interest in starting community-wide planning before the financial crisis hit, there are currently no such efforts for broad coordination of services.

organization would be able to start a project to serve that domain area and absorb the work

Shift service provision model:

Another strategy is to shift the service provision model. One provider advocated that organizations evolve from a “one-on-one hand-holding approach” to more of a business model that would permit a greater volume of services to be provided. For example, that provider is considering an attorney-of-the-day project that would permit a larger group of clients to receive information and advice. A number of providers are also increasing the time they spend providing advice to pro se litigants so that they can reach more people. They are also increasing their systemic and budget advocacy efforts to improve the systems clients must navigate and reduce the need for individual representation. One provider is considering whether the services it provides are too comprehensive; it may be possible to cut back services in some cases without jeopardizing the result and thereby increase the number of clients attorneys can serve.

Focus on what can be provided to pro se litigants:

A related strategy is to create more resources for pro se litigants generally. One provider reported that it now sees many complex debt cases. Because these cases are generally time- and labor- intensive, and would tie up significant staff attorney time, the provider partnered with a law firm to create a self-help manual. Similarly, another provider is looking at ways to use client-friendly technology (e.g. “hotdocs”) at the domestic violence intake centers to mitigate the need for attorney involvement. Another provider is increasing the staffing of existing pro se clinics and starting new ones that are responsive to growing needs.

Create administrative efficiencies by reducing redundant infrastructure and administrative tasks:

Many providers recognize that there is considerable redundancy in the individual IT, health care, employee benefits, payroll, development, and purchasing infrastructures that they maintain. Several organizations expressed interest in exploring how they might combine efforts either through joint purchasing initiatives or by approaching outside payroll and other vendors as a group to negotiate better rates. One provider requested that organizations that hire consultants for administrative advice share the results with the rest of the community. Some providers urged organizations to link with DC Cares for assistance with management and other support and to connect with the Center for Non-Profit Advancement and Non-Profit 911.

Technology:

A few providers suggested exploring ways to use technology to function more effectively as a network. For example, some providers thought it would be optimal for more organizations to use the same case management system. This would ease case referrals

and information-sharing and enable file transfers between organizations. It would also permit uniform data reporting and mining. Other providers countered that it is almost impossible to identify one system that works for all organizations (e.g. some holistic services providers use social service based case management systems). Even if a system were identified, many providers are reluctant to change their systems again given how difficult it is to train staff and get them comfortable in new systems.

Focus on types of cases that have funding attached:

Some organizations are in the process of identifying types of cases that have funding attached. For example, one provider is thinking about expanding its teen and parent education services since funding is available for those tasks. One provider did strongly caution organizations against letting the mission of the organization follow the money, particularly since the priorities of some large institutional funders seem to change frequently.

Become a subcontractor of another organization:

One provider is trying to take on pieces of projects spearheaded by other entities. This provider tracks who bids on projects that involve its areas of expertise and then seeks to become the subcontractor providing those services.

Increase use of pro bono:

Across the board, organizations are examining ways to increase the use of pro bono resources to expand capacity. Most organizations are working hard to educate firms about the impact of the economic crisis on their clients and the ability of their organizations to provide adequate services. They are urging firms to increase pro bono work on both individual and systemic cases. Providers report that they are getting mixed messages. On the one hand, they hear that many law firms are seeking pro bono work for underutilized attorneys and that they want to increase pro bono hours to compensate for decreased donations. Simultaneously, they hear that associates are fearful of taking on pro bono work because they don't want to advertise that they are not busy with paid work. Some providers are developing manuals, protocols, and best practices materials to enable organizations to more easily manage pro bono work and to even out the quality of pro bono assistance.

Some organizations are also contemplating more creative use of pro bono resources.²³ They are using pro bono attorneys and loaned associates to create additional capacity where hiring freezes have left vacated positions unfilled. Two providers are referring cases to firms at earlier stages, thereby transferring the work of vetting and investigating the case to the firm.

Some providers are using volunteers to augment their pro bono programs. For example, one organization that had to reduce its pro bono coordinator capacity is using senior

²³ The DC Bar Pro Bono Program is convening providers to brainstorm more creative requests of firms.

lawyers to provide mentoring and other support. This significantly reduces the burden on the pro bono coordinator and staff. Organizations were very interested in ways to use senior lawyers to provide mentoring and support to pro bono attorneys. The resources needed to support pro bono attorneys are a significant factor for organizations as they determine how much pro bono work they can support. Senior lawyers can reduce this burden. Providers speculated that senior lawyers would also be great resources for organizations that are trying to launch new pro bono initiatives. One provider suggested that senior firm attorneys might be interested in assisting with this function while remaining at their law firms, which would permit the firm to assist with the administrative burden and provide other resources.

Some providers are also making non-traditional requests of firms, including reprinting manuals, copying materials, donating lexis services, and hosting meetings and trainings.²⁴

Most providers cautioned that, although pro bono work is extremely valuable to the legal services community, it is not a panacea. Providers expressed concern that both firms and funders view pro bono as a solution to their funding challenges. They emphasize that staff and pro bono attorneys are not fungible; because of their expertise and experience, there is more utility to organizations in adding staff attorneys than pro bono attorneys. Similarly, pro bono service is not a substitute for money donations. Organizations have many funding needs that cannot be met through pro bono hours. They want firms to understand that both pro bono work and donations are critical.

Providers also warned that many organizations are simply not in a position to ramp up their pro bono programs. Supporting pro bono work well is a significant staff commitment as attorneys spend considerable time training, mentoring, and providing support. This work substantially decreases the time staff can spend on their own cases. Most organizations report that they simply cannot increase pro bono without increasing staff resources, an unlikely event in the current economy. As organizations lose staff, they also lose their capacity to support pro bono work. Some providers also expressed concern that although law firms currently have a lot of attorneys available to do pro bono work, they will ultimately “rightsize” and these resources will disappear. Another provider noted that although firms are eager to take pro bono cases, some are trying to keep costs down and are questioning the use of experts and other expenses. In addition, a number of providers commented that pro bono attorneys generally are not equipped to handle clients with significant social services issues. They commented that, since so many more clients are now manifesting such issues, the pool of clients that are a good match for pro bono representation is shrinking.

Because running a pro bono program is a significant administrative commitment, some providers queried whether pro bono administration should be more centralized to reduce the burden on individual organizations. The DC Bar Pro Bono Program has an effective infrastructure for managing pro bono and could potentially be used to centralize some

²⁴ Since copying, training, etc. are often in different budgets than the pro bono program, these requests might be successful even when requests for donations or increased pro bono work are not.

functions. Other providers countered that although centralization might create some efficiencies, it is crucial for organizations to have personal connections to firms. These relationships help to ensure money donations and other assistance. Some posited that centralization might be a good option for providers who don't currently have pro bono coordinators or who have had to eliminate their pro bono coordinator position.

Some organizations are looking to their own alumni who are in private practice to take pro bono cases or co-counsel. The advantage of this approach is that they will not require significant training or mentoring. For the same reason they are also targeting former loaned associates both to take cases and to act as firm mentors.

Co-Location:

There was little discussion about co-locating with other legal services providers. One provider posited that co-location is not practical in the short term because of lease obligations. Another cited the complex ethical issues that arise when legal services providers share space. A few providers cited the costs associated with moving their offices.²⁵

Several providers expressed interest in exploring co-locations with social services providers. The ethics issues are less complex, and it would permit organizations to provide more holistic services to clients, reach new client communities, and get exposure to new funding streams

Merger:

Generally speaking, providers do not appear to be considering merger, particularly as a short-term option.²⁶ Two providers spoke about their mergers and reported that they were very successful, creating huge economies of scale through combined overhead, resources, fundraising, pro bono infrastructure, and staff and board resources. The mergers eliminated the duplication of administrative and other efforts, increased access to law firms and private resources, and freed up staff to do substantive work instead of fundraising and administration. Perhaps most importantly, they succeeded in reducing redundant infrastructures without decreasing the number of attorneys providing services or the net amount of service being provided.

²⁵ One provider shared its long-term aspiration of obtaining space near the courthouse where a number of providers could co-locate. They would share space, library resources, and community meeting rooms. Having many organizations under one roof would ease referrals, facilitate joint systemic and other advocacy, and create other synergies. It would also enable organizations to share infrastructure and reduce redundant systems.

²⁶ Although a couple of organizations expressed willingness to explore logical partners for mergers, it seems clear that these were preliminary impressions and that no concrete conversations have occurred. Some larger organizations noted that it might be difficult for smaller organizations to discuss merger in front of them and that it might be useful to have a third party approach struggling organizations and encourage them to reach out to potential merger partners.

Providers articulated a number of concerns about merger of legal services organizations. First, as is discussed above, organizations are not fungible. Specialized providers offer a different array of supports to certain communities that general legal services organizations do not provide. Second, mergers are very difficult to execute successfully. Good mergers require substantial planning up front (i.e. mergers in the private sector are often planned for years before being executed). There are difficult integration and operations issues to address. Organizations also have different cultures, practice standards, conceptions about quality services, and case management systems that can be very difficult to integrate. Third, mergers are costly. Fourth, there are no market incentives for organizations to look for other providers to merge with. Organizations are struggling with their current caseloads, let alone the added caseloads that merging with a struggling organization would create. Fifth, mergers are simply not a short-term solution. Even a merger executed relatively quickly will produce an organization with growing pains and kinks to work through. Finally, mergers create conflict issues. One board chair cautioned that mergers simply cannot be done under duress.

Several directors also acknowledged that it was difficult to discuss merger with other organizations because of their fiduciary duties. They also noted that in order for merger to be a viable option, discussions have to occur before the situation becomes critical. In the current climate, most organizations are so focused on trying to preserve client services and stay afloat that they do not consider merger until the situation becomes untenable.

Need for short-term solutions:

One provider noted that the problem with most of these strategies is that they present potential solutions for the long-term but will not mitigate the urgent problems organizations are facing now. Technology-based solutions, co-location, merger, combining administrative infrastructures and expansive collaborations all require lengthy planning efforts and long lead times for execution. They are also the types of initiatives that should ideally be considered as part of community-wide state planning efforts. A number of providers seem amenable to using this crisis as a springboard to discuss structural changes that will improve how the network functions and insulate against future crises. However, most organizations are too strained right now to engage in long-range community planning efforts and need solutions that can be implemented now.

III. Summary

It is clear from the information provided at the listening sessions that most providers are struggling to cope with the fallout of the financial crisis. Most are scrambling to meet increasing needs with decreasing resources and are facing tremendous uncertainty about how much worse the situation will become. Although some organizations appear to be thinking creatively about how efficiencies might be achieved, many are still in a wait-and-see mode. They are largely focusing on how to maintain the viability of their organizations and maximize the amount of services they can provide through existing

paradigms. In addition, most organizations are not in a position to get ahead of the new needs that are emerging; they are struggling just to meet existing demands.

A few organizations are starting to advocate for an increased focus on services rather than organizations. They believe that it is necessary to shift the conversation to how the network should be reconfigured to promote maximum service provision to clients. Recognizing that need is going to exponentially outstrip supply as the crisis worsens, they believe that the community should start to identify essential services and figure out how to maintain them. These organizations suggest that they use the current crisis as an opportunity to make dramatic structural changes to the network and rationalize service provision. They believe that extraordinary times require extraordinary responses and are hopeful that the network can emerge stronger.

Appendix A: Listening Session Attendees

Session I – January 12, 2009, 12 – 2 p.m.

Legal Services Provider Participants:

Rawle Andrews, Managing Attorney, Legal Counsel for the Elderly
Rod Boggs, Executive Director, Washington Lawyers' Committee for Civil Rights & Urban Affairs
George Jones, Executive Director, Bread for the City
Marty Klepper, Board President, Legal Aid Society of DC
Jan May, Executive Director, Legal Counsel for the Elderly
Jeannine Sanford, Deputy Director, Bread for the City
Jonathan Smith, Executive Director, Legal Aid Society of DC
Denise Vanison, Board Co-Chair, Washington Lawyers' Committee for Civil Rights & Urban Affairs

Access to Justice Commission Representatives:

Sunil Mansukhani, Executive Director, DC Access to Justice Commission
Peter Edelman, Chair, DC Access to Justice Commission

Bar Foundation Representatives:

Joanne Doddy Fort, Treasurer, DC Bar Foundation
Katia Garrett, Executive Director, DC Bar Foundation
Steve Pollak, Board President, DC Bar Foundation
Marsha Tucker, DC Bar Foundation Grants & Technical Assistance Committee Member
Claudia Withers, Director of Programs, DC Bar Foundation

Session II: January 14, 2009, 10 – 12 p.m.

Legal Services Provider Participants:

Donald Blanchon, CEO, Whitman-Walker Clinic
Daniel Bruner, Director of Legal Services, Whitman-Walker Clinic
Denise A. Capaci, Director of Adult & Family Services, Catholic Charities of the
Archdiocese of Washington
Theodore Chuang, Board Chair, APALRC
Melvina Ford, Executive Director, DC Employment Justice Center
Thia Hamilton, Executive Director, Women Empowered Against Violence (WEAVE)
Joe Kolick, Board Chair, DC Employment Justice Center
Marcia Marsh, Board Chair, Women Empowered Against Violence (WEAVE)
Elizabeth Meers, Advisory Council Chair, Archdiocesan Legal Network
Jose Palacios, Director of Finance and Administration, APALRC
Myron Quon, Executive Director, APALRC
Jim Sandman, Board Chair, Whitman-Walker Clinic

Access to Justice Commission Representatives:

Sunil Mansukhani, Executive Director, DC Access to Justice Commission

Bar Foundation Representatives:

John Cruden, Board Member, DC Bar Foundation
Katia Garrett, Executive Director, DC Bar Foundation
Steve Pollak, Board President, DC Bar Foundation
Marsha Tucker, DC Bar Foundation Grants & Technical Assistance Committee Member

Claudia Withers, Director of Programs, DC Bar Foundation

Session III: January 21, 2009, 2 – 4 p.m.

Legal Services Provider Participants:

Alvita Eason Barrow, Managing Director, Columbus Community Legal Services
Guy Collier, Board Member, Children's Law Center
Claudia Crichlow, Board Chair, Ayuda
Wayne Curtis, Board Chair, Children's Law Center
Kathy Doan, Executive Director, CAIR
Rochanda Hiligh-Thomas, Legal Director, Advocates for Justice and Education
Catherine Klein, Legal Director, Columbus Community Legal Services
Kim Jones, Executive Director, Advocates for Justice and Education
Lisa Martin, Professor, Columbus Community Legal Services
Elisa Massimino, CEO and Executive Director, Human Rights First
Laura Parcher, Board Chair, CAIR
Judith Sandalow, Executive Director, Children's Law Center
Christina Wilkes, Acting Executive Director and Legal Director, Ayuda
Joan Geiger Wood, Development Director, Children's Law Center

Access to Justice Commission Representatives:

Sunil Mansukhani, Executive Director, DC Access to Justice Commission

Bar Foundation Representatives:

Katia Garrett, Executive Director, DC Bar Foundation
Steve Pollak, Board President, DC Bar Foundation
Marsha Tucker, DC Bar Foundation Grants & Technical Assistance Committee Member
Claudia Withers, Director of Programs, DC Bar Foundation

Session IV: January 22, 2009, 10 a.m. – 12 p.m.

Legal Services Provider Participants:

Edward Allen, Director of Housing and Consumer Law Clinic, UDC David A. Clarke School of Law

Shelley Broderick, Dean, UDC David A. Clarke School of Law

Jane Brown, Executive Director, University Legal Services

Margaret Drachsler, Board Chair, University Legal Services

Brenda Ford Harding, Executive Director, Neighborhood Legal Services Program

Susan Hoffman, Board Chair, DV LEAP

Kevin Kelly, Director of Low Income Tax Clinic, UDC David A. Clarke School of Law

Bing Leverich, Board Co-Chair, Neighborhood Legal Services Program

Joan Meier, Executive Director, DV LEAP

Penelope Spain, Executive Director, Mentoring Today

Tricia Swartz, Director, National Center for Refugee and Immigrant Children

Access to Justice Commission Representatives:

Sunil Mansukhani, Executive Director, DC Access to Justice Commission

Bar Foundation Representatives:

Katia Garrett, Executive Director, DC Bar Foundation

Steve Pollak, Board President, DC Bar Foundation

Marsha Tucker, DC Bar Foundation Grants & Technical Assistance Committee Member

Session V: January 28, 2009, 10 a.m. – 12 p.m.

Legal Services Provider Participants:

Shawn Armbrust, Executive Director, Mid-Atlantic Innocence Project
Mary Brittingham, Executive Director, DC Law Students in Court
Nancy Cantalupo, Board Chair, DC Law Students in Court
Almo Carter, Board Chair, Our Place, DC
Guy Collier, Pro Bono Committee Chair, DC Bar (check)
Flordelisa Perez Dolan, Development Director, DC Law Students in Court
David Eppler, Board President, Mid-Atlantic Innocence Project
Patty Mulahey Fugere, Executive Director, Washington Legal Clinic for the Homeless
Mark Haufrect, Board Member, Mil Mujeres
Wes Hepler, Board Chair, Washington Legal Clinic for the Homeless
Mark Herzog, Deputy Director, DC Bar Pro Bono Program
Stacy Jones, Staff Attorney, Mil Mujeres
Barbara Laur, Interim Executive Director, Our Place, DC
Fernanda Martinez, Board Chair, Mil Mujeres
Elizabeth Olds, Executive Director, SAFE
Maureen Syracuse, Director, DC Bar Pro Bono Program

Access to Justice Commission Representatives:

Sunil Mansukhani, Executive Director, DC Access to Justice Commission

Bar Foundation Representatives:

Katia Garrett, Executive Director, DC Bar Foundation
Steve Pollak, Board President, DC Bar Foundation
Claudia Withers, Director of Programs, DC Bar Foundation