

Rationing Justice: the Effect of the Recession on Access to Justice in the District of Columbia

A Joint Report of the District of Columbia Access to Justice Commission and the D.C. Consortium of Legal Services Providers

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It is the daily; it is the small; it is the cumulative injuries of little people that we are here to protect....If we are able to keep our democracy, there must be one commandment: THOU SHALT NOT RATION JUSTICE.

Learned Hand, Address at the 75th anniversary celebration of the
Legal Aid Society of New York, February 16, 1951

Introduction

Legal assistance is a critical strand in the safety net for low-income individuals and families. As the economy forces working families into poverty and social services and government resources become scarce, more people are facing problems meeting basic human needs. Lawyers can make a difference by keeping families in their homes, helping children get health care, securing wrongfully denied unemployment benefits and helping persons with disabilities get Social Security.

Even before the recession, there was not enough legal aid to meet the needs of low-income District residents. In its report, "Justice for All?" the D.C. Access to Justice Commission documented the gaps in legal services for individuals living in poverty.¹ In every area examined -- housing, family law, consumer, education, employment, health access, public benefits, disability, immigration -- there were vastly more clients who needed help than services available to assist them.

The recession is decreasing the availability of legal services while the need is increasing. Virtually every source of funding for civil legal aid in the District has diminished over the last year. Programs report losing more than 25% in revenue and have shed approximately 12.5% of their lawyers and nearly 40% of non-lawyer staff, including paralegals, social workers, case managers and administrative support. As a result of these staff cuts, thousands of District residents who need legal help did not get served.

There will be more cuts in services and staff in 2010. The crisis in representation will grow worse before it gets better. District government and grant funding have already been cut for the next year and, to sustain as many services as possible, legal assistance organizations have used reserves, imposed hiring freezes, required unpaid furloughs, frozen or cut salaries and overworked their staffs. As we enter another year of recession, available options are drying up, and further service cuts are inevitable.

The Increased Need for Legal Services is Driven by the Recession

The District has been hit hard by the recession. Those at the bottom of the economic scale have been hit the hardest. The official unemployment rate for the District is 11.4%.ⁱⁱ But the District-wide rate masks the dramatic effect the recession has had in some parts of the city. The unemployment rate in Ward 8 is 28.3%, nearly 10 times the Ward 3 rate of 3.2%. Ward 7 has not fared much better at 19.5% nor Ward 5 at 15.5%.ⁱⁱⁱ

Individuals living in neighborhoods with high rates of poverty are facing desperate conditions. Jobs that paid subsistence wages have disappeared, government programs have shrunk and charities have fewer resources to help. What is a recession in the rest of the District is a deep depression in Wards 5, 7 and 8.

Residents in these neighborhoods are facing new legal problems caused by the recession. Legal services lawyers estimate a 20% increase in demand for help.^{iv} This probably underestimates the actual need. It is the experience of long-time legal services lawyers that many potential clients fail to seek services because they lack information about their rights, they cannot afford transportation or they are discouraged by prior experiences of not receiving services at an office that was too busy to help.^v

Among the new or increased needs are the following:

- *Foreclosures:* Foreclosures are on the rise and the hardest hit areas are East of the River.^{vi} There were 2,353 single family homes and condos placed in foreclosure in the second quarter of 2009 alone.^{vii} Very few of the homeowners had access to counsel to raise defenses or negotiate a settlement that would save a family's home.
- *Tenancy after Foreclosure:* An increasing number of homes in foreclosure are rental properties. While tenants have a right to stay and become a tenant of the bank, the right is hard to enforce without a lawyer.^{viii} Without readily available counsel, tenants are forced to bear the expense and disruption of moving and sometimes the trauma of becoming homeless while the house sits unoccupied.
- *Domestic Violence:* The incidence and severity of domestic violence is on the rise. As economic stress puts pressure on families, and women face increasing economic dependence, intimate partner violence increases.^{ix} Access to a lawyer is often the only way for a woman and her children to escape from an abusive relationship. This is a specialty area of law that requires extensive training and the ability to provide representation on a broad range of collateral issues for a sustained period of time.
- *Homelessness:* Homelessness is increasing and prevention services are being cut.^x Veterans still coming to terms with their service in Iraq and Afghanistan have joined the increasing number of families who are homeless because of the

economy. Homeless families face a shelter system lacking the capacity to respond to their needs. With more than 400 families on the waiting list for emergency shelter, it often takes a lawyer's intervention before a family can secure a safe place to sleep at night. Without a lawyer, homeless families have slept outdoors, in cars and abandoned buildings.

- *Unemployment Benefits:* As more jobs are lost, unemployment benefits are an increasingly important source of income for low-income families. Unemployment disputes have generated a large number of appeals to the Office of Administrative Hearings (OAH) where having a lawyer is often necessary to argue a complex legal issue.
- *Temporary Assistance for Needy Families, Food Stamps, Disability and other Benefits:* Public benefits are the final safety net for many families. There are 16,000 families in the District that rely on TANF for basic cash support^{xi} and hunger is on the rise.^{xii} A bureaucratic error, language barriers, or mental disabilities can make the system challenging to navigate and mistakes impossible to correct without the help of a lawyer.

At the same time that needs are increasing, there are fewer places for clients to turn for help. Social services are less available as non-profits have fewer resources and government budget shortfalls have forced cuts. The following are illustrations of safety net cuts that increase the need for legal assistance.

- *Emergency Rental Assistance Program (ERAP):* ERAP is a District program that helps very low-income tenants -- those living within 125% of poverty -- to remain in their homes. If a qualified tenant falls behind in rent and is sued by her landlord, an ERAP grant can help the tenant avoid eviction. With the rise in unemployment, there has been an increased demand on the ERAP program.^{xiii} ERAP funds were exhausted mid-way through 2009 and no new funds have been made available six weeks into the District's new fiscal year.
- *Local Rental Supplement:* As a result of the high cost of rental housing, very low-income tenants can often stay in their homes only with help from the District's Local Rent Supplement program. The District cut \$2 million from this program in July.
- *Food Banks and Private Charities:* Food banks, feeding programs and other charitable supports are stretched to the limit.^{xiv} Demand is greater but programs are receiving less funding and providing fewer services. Not only have private donations dropped, but government support is lower as well. In July, the District stripped millions of dollars from its budget that were designated for critical social services.^{xv}

- *Domestic Violence Services:* Despite the increasing need for services for survivors of domestic violence, the District substantially cut funding for domestic violence services this summer.^{xvi} Without support, many women and their children will have no choice but to remain with their abuser.
- *Homeless Services:* To help address its budget shortfall, the District cut \$12 million from its homeless services budget.^{xvii} This represents a 20% cut at a time of increasing need.

Lawyers are sometimes essential for individuals and families to meet basic needs of security, nutrition, health care and shelter. The resulting savings, whether measured by the social costs or by the reduction in expenses to the District for services, far outstrip the cost of providing a lawyer who can solve a problem.

Legal Services Providers Have Decreased Resources in the Face of Rising Needs

Budgets Reduced by More Than \$4.5 Million -- a Drop of More than 25%

The budgets of legal assistance organizations are under extreme pressure. The Access to Justice Commission (Commission) and the Consortium of Legal Services Providers (Consortium) conducted a survey of legal services programs in the fall of 2009 to determine the impact of the decreased funding. The survey results are alarming.

Prior to the recession, the combined budgets of legal assistance organizations were approximately \$18 million.^{xviii} Not every program provided information about its fundraising, but among those who did the survey found that funding for legal services has decreased by more than \$4.5 million.^{xix} These funding reductions represent more than 25% of the legal services network, and this figure does not even include the cut in public funding for fiscal year 2010 that occurred this past summer. Moreover, providers project further reductions in other funding sources. Unless there is a substantial change, 2010 will be an even more difficult year than 2009.

Reductions in funding were nearly universal. Small programs and large, general and specialty, free-standing organizations and those embedded in a social services agency: every corner of the sector was affected. Support declined from all sources: individual, institutional, foundation and government.

The major components of the cuts are the following:

IOLTA: Among the largest sources of funding for legal assistance is the Interest on Lawyers Trust Account (IOLTA) program. By rule of the D.C. Court of Appeals, lawyers who practice in the District and hold client money are currently required in most circumstances to keep nominal or short-term funds in a pooled client trust account. Unless lawyers have opted out of the District's IOLTA program, these accounts earn interest, which is paid to the D.C. Bar Foundation to support grants to legal assistance organizations in the District.

In 2008, the D.C. Bar Foundation received over \$2 million from IOLTA accounts. As a result principally of the unprecedented decline in interest rates, IOLTA revenue dropped by over 60% in 2009. The Foundation was forced to dip into its reserves to sustain grant giving at just half of the prior year's level. These grants may well be smaller in 2010 if interest rates decrease as experts predict.

Private Bar: Lawyers and law firms are generous funders of legal services in the District. Each year they contribute millions of dollars in donations and in volunteer services. Programs rely on their financial support which comprises as much as two-thirds of the funding for some organizations.

There was a large drop in law firm business in late 2008 and throughout 2009. Law firms laid off associates and staff and incoming lawyers were deferred from three months to a year because there was not enough paying work to keep them busy. Declining business also affected charitable contributions. Providers report that law firms and individual lawyers are giving as much as 20% less in 2009 than in the prior year. This represents an estimated decrease of approximately \$1 million.^{xx}

District of Columbia Government: The District of Columbia government provides support for legal services through a grant to the D.C. Bar Foundation and grants directly to providers through the Office of Victim Services. The Bar Foundation grant, which is completing its third year, was \$3,285,000. For 2010, this grant has been reduced by 20% to \$2,639,000. These funds are re-granted to providers. The funding reduction will require providers to reduce their ranks of lawyers by an additional 6 to 9 lawyers.^{xxi}

The District's Office of Victim Services (OVS) supports domestic violence services, including legal services. The funding for OVS was cut by \$340,000 for the budget year beginning in October 2009. Much of these funds came out of civil legal services, which resulted in several programs being cut, including one program that was cut nearly \$90,000.^{xxii}

Other government agencies that provide grants for civil legal services were also cut. One program lost \$50,000 in funding from the Office of Latino Affairs and another more than \$20,000 from the Office of Asian and Pacific Islander Affairs.

Private Foundations: Charitable giving decreased significantly in 2008 and 2009. Nationally, giving is down \$7 billion from 2007, with social services organizations taking the biggest hit.^{xxiii} Giving for human services funding dropped by 12.7% nationwide.

Local foundations have worked hard to sustain existing grantees, especially in the legal services community. Although their assets are down, many have maintained near level funding by cutting operating costs and dipping into capital. These measures cannot continue in 2010. The Foundation Center predicts that giving will decline another 8% to 13% in 2010.^{xxiv} Legal services programs will not be spared as foundations are forced to reduce their grant programs.

Staff Cuts Have Been Substantial – 21 Lawyers and 30 Other Staff

In the face of this loss in income, legal assistance organizations report that they have reduced their attorney staff by at least twenty-one full-time attorney positions. Lawyers were not the only positions affected. At least thirty non-lawyer positions were cut, including sixteen paralegals, several case managers and outreach workers, two social workers, a translator, two therapists, six managers, a project coordinator and two advocacy directors. Every position was key to the effective and efficient delivery of legal assistance. Without these staff, the quality and quantity of services diminishes.

The magnitude of these cuts is staggering. The twenty-one-lawyer reduction represents more than 12% of the 170 lawyers who were representing District residents living in poverty. The thirty non-lawyer staff cut represents 37% of the non-lawyer workforce.

Other Measures Have Been Taken – Cuts in Salary and Benefits

Legal services lawyers are among the most poorly paid in the profession. With starting salaries hovering at \$40,000 per year and only modest increases for experienced lawyers, compensation was an issue before the recession. The effects of the recession have made matters worse. To address fiscal shortfalls and sustain services, programs have:

- Cut or frozen salaries;
- Forced staff to take unpaid leave;
- Reduced or eliminated benefits including health insurance and 401(k) contributions; and
- Reduced or eliminated budgets for training and professional development.

These cuts have an impact that goes far beyond the number of staff involved. To be effective, legal services needs a corps of well-trained and experienced lawyers. Many areas of poverty law are complex. The lives of people living in poverty are highly regulated and the intersection between statutes, regulations and decisional laws is not obvious to those without experience. Many of the cases that legal services lawyers handle are in specialty courts with unique rules and unwritten customs. The ability to effectively build a trusting relationship with a low-income client takes years of practicing anti-poverty law to develop.

The effect of cuts in salary, benefits and professional development budgets will drive good lawyers from anti-poverty law practice. The impact will be felt by clients who receive a diminished level of service and less skilled counsel.

Deferred Associates, While Helpful, Are Not an Adequate Solution

Business has slowed during the recession for many major law firms. In response, several firms have generously made unneeded first year associates available to public interest organizations, including District legal services groups. Deferred associates are doing important work, but because they are only available for up to one year, typically do not yet have a license

to practice law and are early in their careers, they cannot accomplish the results or do the work of a permanent staff lawyer.

Legal Services Have Decreased as a Result of a Substantial Drop in Funding and District Residents and Neighborhoods are Being Impacted

Cuts to the budgets of legal services providers have serious effects on low-income residents and on the health and life of the District and its neighborhoods. Among the effects are the following:

Fewer Clients are Being Served

On average, annually each legal services lawyer can handle 50 cases in litigation and 100 matters with assistance short of litigation.^{xxv} During this year, when legal needs are more acute and urgent, the network of legal services providers lost the capacity to represent 1,050 clients. In addition, as many as 2,100 low-income District residents in need of advice, brief assistance, help with representing themselves or to reach a settlement were not served.

Supportive Services Beyond Legal Services are Being Eliminated

The loss of social workers, case managers and therapists within legal services organizations will be felt particularly acutely. Legal services clients present with multiple and complex issues. Legal issues are often intertwined with social problems, and the ability to benefit from counsel depends on the resolution of a social services need. A protective order for a woman escaping violence, for example, has little meaning if she has no place to live, cannot access public benefits, or has no child care so she can work. The loss of social workers and other non-legal staff from legal services organizations dilutes the impact legal remedies can have in improving clients' lives.

Legal Services and Access Points are Being Limited

Surveyed legal services organizations reported using a range of strategies in response to reduced funding. Many of these strategies have the effect of limiting client access or the services being provided, including:

- Reduced walk-in hours for new clients to seek services. The effect is to create a barrier to access and significantly reduce the availability of services for clients seeking representation for an emergency;
- Decreased provision of extended representation in favor of increased brief services and *pro se* support.^{xxvi} By taking this step, programs may help the same number of clients, but are unable to help clients reach as positive a resolution or help clients with more complex legal problems;

- Narrower scope of representation. Some programs report limiting their services to fewer types of cases. This step limits access as well as making it harder to achieve results for clients with multiple interrelated issues.
- Prioritizing cases that will resolve quickly and require fewer resources or for which there is a higher likelihood of success. This strategy makes it harder for the most needy or vulnerable clients to get help.

Law Reform and Structural Advocacy Efforts Have Been Reduced

In order to help individual clients, legal services organizations report that they have reduced advocacy, systemic litigation and the pursuit of test cases. Often, broad-based change can be the most effective strategy to address the needs of a large group of clients. There are many examples of legal services lawyers achieving large scale change by working with agencies to draft regulations, working with the Court to change its rules, working with the Council to pass a new law, developing decisional law in the Court of Appeals and bringing litigation to correct a widespread practice of an industry or the government. With fewer resources, legal services organizations are forced to focus on individuals' emergency needs rather than on longer term, higher impact results.

Programs Have Been Eliminated

The recession has caused the loss of critical components or practice areas in larger organizations. For example:

- A program that serves domestic violence survivors dramatically reduced counseling services. The program had the only therapeutic program specifically designed for domestic violence.
- A legal services program embedded in a larger more holistic agency severely limited all but internal referrals for public benefits and family law cases.
- A provider eliminated staff for a long-standing project on education reform, leaving the community with fewer tools to participate in the District government's recent efforts to focus on improving the schools.

Legal Services Programs Now Lack the Resources to Meet Emerging Needs

Legal services organizations have been struggling to address the most critical needs of District residents, sustain as many of their services as possible, and deal with the loss of staff and the impact on staff morale. As a result, it has been nearly impossible to develop new strategies or adjust priorities to address emerging issues such as the foreclosure crisis or the needs of homeless veterans.

Conclusion

Somewhere in the District a family won't have enough to eat tonight because of a bureaucratic mistake. A child will be hospitalized yet again because the rat droppings in her apartment caused an asthma attack. A veteran who has served in combat will sleep on the street because he could not access the public benefits, mental health services and shelter to which he is entitled. At this time of great and increasing need, lawyers could make a difference for this family, this child and this veteran — as well as the thousands of District residents who face similar problems.

Because of the crisis in legal services, there are simply not enough lawyers to help our suffering, low-income neighbors. And next year there will be even fewer. The safety net has been seriously weakened and legal services providers, which have historically been a critical component of that safety net, have fewer resources available to help the most vulnerable members of our community. The result is that justice is being rationed. And, as is too often the case, those most in need are getting too small a measure of justice.

ⁱ <http://www.dcaccessjustice.org/files/CivilLegalNeedsReport.pdf>

ⁱⁱ <http://newsroom.dc.gov/show.aspx/agency/does/section/2/release/18391>

ⁱⁱⁱ <http://washington.bizjournals.com/washington/stories/2009/11/02/daily35.html?surround=lfm>

^{iv} <http://www.dccbarfoundation.org/documents/ProviderListeningSessionsJan09.REPORT.pdf>

^v In addition, as intake workers and other staff of social and human services agencies are cut due to the recession, fewer clients are screened and assessed for legal issues. Many legal problems are identified through screenings by non-legal providers and cuts in those organizations reduce the number of clients referred to legal services providers for help.

^{vi} http://www.neighborhoodinfodc.org/housing/DCHousingMonitor_2009_2/Table5.pdf. The highest rates of foreclosure are in Wards 7 and 8, with Wards 4 and 5 close behind. Twenty three per thousand of homes in Wards 7 and twenty-one per thousand of homes in Ward 8 are in foreclosure, while fewer than three per thousand are in foreclosure in Ward 3.

^{vii} <http://www.neighborhoodinfodc.org/foreclosure/>

^{viii} “A landlord-tenant dispute, like any other lawsuit, cannot be resolved with due process of law unless both parties have had a fair opportunity to present their cases. Our courts were never intended to serve as rubber stamps for landlords seeking to evict their tenants, but rather to see that justice be done before a man is evicted from his home.” *Pernell v. Southall Realty*, 416 U.S. 363, 385 (1974)

^{ix} <http://new.vawnet.org/category/Documents.php?docid=2187>

^x <http://dcfpi.org/?p=926>

^{xi} <http://dcfpi.org/wp-content/uploads/2009/11/11-12-09TANFreport.pdf>

^{xii} <http://www.dcaccessjustice.org/files/CivilLegalNeedsReport.pdf>

^{xiii} <http://dcfpi.org/wp-content/uploads/2009/03/erap.pdf>

^{xiv} <http://www.capitalareafoodbank.org/wp-content/uploads/2009/08/2009metropolitanareahungerconference1.pdf>. Nearly 12% of District residents are defined by the federal government as food insecure. <http://www.dchunger.org/about/facts.html>.

^{xv} <http://www.dccouncil.washington.dc.us/fiscalyear2009and2010budgetgapclosing>

^{xvi} <http://www.washingtonpost.com/wp-dyn/content/article/2009/09/30/AR2009093004837.html>

^{xvii} <http://dcfpi.org/?p=926>

^{xviii} The “Justice for All?” report found that the network was \$15 million and 140 lawyers in 2005. Since that time, the District provided \$3.6 million in support which added approximately 30 additional lawyers.

^{xix} Among the organizations that reported a loss in revenue are providers that deliver a range of services to their clients beyond legal services. In a few cases, reported loss of revenue includes other supportive services.

^{xx} Prior to the recession, individual lawyer and law firms contributed \$5.3 million.
<http://www.dcccesstojustice.org/files/CivilLegalNeedsReport.pdf> at 43.

^{xxi} The costs associated with the salary, benefits and overhead of a legal services lawyer is generally between \$75,000 and \$100,000.

^{xxii} http://cfo.dc.gov/cfo/frames.asp?doc=/cfo/lib/cfo/budget/2010/revised_071709/dc_gov_vol_2_fy_2010_budget_-_agency_budget_chapters_part_i.pdf at C-145, and <http://dcfpi.org/wp-content/uploads/2009/07/7-23-09-mayors-budget-proposal.pdf>

^{xxiii} http://www.aafrc.org/press_releases/gusa/GivingReaches300billion.pdf and http://online.wsj.com/article/SB10001424052748704500604574481773446591750.html?mod=WSJ_hpp_sections_personalfinance.

^{xxiv} http://www.foundationcenter.org/gainknowledge/research/pdf/researchadvisory_economy_200911.pdf

^{xxv} The D.C. Bar Foundation collects statistical information on the work performed by grantees. These figures are an average for a legal services lawyer. Some lawyers who handle simpler matters might carry a higher caseload and those with more complex cases will handle fewer over the course of a year.

^{xxvi} The Pro Bono Program’s Landlord and Tenant Resource Center reports an increase of persons served from 4,687 to 5,296 over the last two fiscal years. This increase is likely the result of both an overall increase in need and a reduction of services by other providers.